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Pennsylvania. Laws, statutes, etc. Mortgage law

MECHANICS' LIENS

In Pennsylvania

Under The Act of June 4, 1901, P. L. 431, and Supplements thereto.

With Forms, and Decisions to Date.

BY

FRANCIS CHAPMAN

Of the Philadelphia Bar.

PROFESSOR OF PRACTICE IN, AND DEAN OF THE LAW DEPARTMENT OF TEMPLE UNIVERSITY.

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PREFACE.

The first Mechanics' Lien law in Pennsylvania was the Act of April 1, 1803, P. L. 591, which applied only to portions of the City of Philadelphia. Other Acts were from time to time enacted without regard to "regular order or proportion" and the resulting confusion was so great that in 1898, the Pennsylvania Bar Association instructed the Committee on Law Reform to consider the state of the Mechanics' Lien law and " in the event of their deeming it proper, recommending the enactment of such laws as may in the opinion of the Committee meet the necessities of the case." In 1899 the Committee reported to the Bar Association, the draft of the Act, now known as the Mechanics' Lien Act of 1901. In drafting the Act, the Committee examined all the lien laws enacted in Pennsylvania as well as other States. The principles governing the Committee in the preparation of the Act are thus stated in the report to the Bar Association:

"In so far as it was deemed possible so to do, we have adhered to the existing law and practice of this State, rather than make immaterial changes in accordance with the laws and practice of other States. This has been done partly because of the well established principle that he who asks a change has the burden of proof to show the necessity for it; partly because a method well understood should not be changed except for grave cause; partly because our methods are alone consonant with our general system of laws; and partly because an attentive study of the statutes of other States has satisfied us that the basic principles of ours are to be preferred. We have not hesitated, however, in extending the rights as well of the owner as of the lien claimant, where existing laws, and the decisions under them have shown the necessity therefor. While we cannot claim that the Act we have drafted is either perfect or strictly logical, we trust it will be found that care has been exercised in conserving, as far as may be, the rights of all concerned."

The Act thus drafted was enacted practically without change. Subsequent legislation has been intended to correct minor defects which time has revealed.

Opinions as to the clearness of the Act vary, but a careful

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study of and adherence to its text and of the decisions under it will suffice to keep the practitioner from going wrong. This little book is not intended as a philosophical study of the law of Mechanics' Liens but as an aid to the busy lawyer and as information to the contractor, material-man and mechanic who wishes to know the law as it now is. In preparing the book I have examined every reported case decided under the Act prior to May 1, 1909, and have cited each under its appropriate section.

That my work is perfect I do not believe, for perfection is not human, but as I have tried to make my book serviceable both to Bar and layman, I bespeak their kindly judgment of it.

My grateful acknowledgments are due to S. Spencer Chapman and Robert Mair, Esquires, for their aid in preparing the table of contents and index and for valuable suggestions as to the forms used and in reading and correcting the proofs and thus avoiding many errors which I perhaps would have overlooked.

FRANCIS CHAPMAN.

Philadelphia, May 24, 1909.

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Mechanics' Liens in Pennsylvania

Act of June 4, 1901, P. L. 431, and Supplements Thereto.

AN ACT defining the rights and liabilities of parties to and regulating the effect of contracts for work and labor to be done, and labor or materials to be furnished to any building, bridge, wharf, dock, pier, bulkhead, vault, subway, tramway, toll-road, conduit, tunnel, mine, coal-breaker, flume, pump, screen, tank, derrick, pipe-line, aqueduct, reservoir, viaduct, telegraph, telephone, railway or railroad line, canal, mill-race, works for supplying water, heat, light, power, cold air, or any other substance furnished to the public, well for the production of gas, oil or other volatile or mineral substance, or other structure or improvement of whatsoever kind or character the same may be, providing remedies for the recovery of debts due by reason of such contracts, and repealing, consolidating and extending existing laws in relation thereto.

This Act is constitutional. It is not an extension of existing laws but a substitute for them.

The laws relating to mechanics' liens had in the course of time grown by additions "without regular order or proportion" and "it was deemed advisable to replace this fragmentary legislation by a comprehensive, consistent Act better adapted to present conditions and more complete in its scope and objects. No existing statute as such was incorporated into the new law, but the meritorious parts of the then existing statutes with such additions as experience had shown to be desirable were combined to constitute a new law intended to be as comprehensive as the requirements of the subject made necessary." Getz *v.* Brubaker, 25 Pa. S. C. R. 305.

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"A mechanics' lien is purely statutory and a compliance with the statutory requirements is necessary to give it validity. There is no intendment in its favor. It must be self-sustaining and must show on its face that it is such a lien as the statute authorized the claimant to file." Knelly *v.* Horwath, 208 Pa. 487.

It is good practice to closely follow the wording of the Act, but if the essential requirements are substantially complied with it is sufficient.

"Adherence to the terms of the statute is indispensable but the rule must not be pushed into such niceties as serve only to perplex and embarrass a remedy intended to be simple and summary without in fact adding anything to the security of the parties having an interest in the building sought to be encumbered." Am. Car Co. *v.* Alexandria Water Co., 215 Pa. 520.

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SECTION 1.

Definitions.

SECTION 1. Be it enacted, &c., That the words "structure or other improvements," as used in this act, mean any building, bridge, wharf, dock, pier, bulkhead, vault, subway, tramway, toll-road, conduit, tunnel, mine, coal-breaker, flume, pump, screen, tank, derrick, pipe-line, aqueduct, reservoir, viaduct; telegraph, telephone, railway or railroad line; canal, mill-race; works for supplying water, heat, light, power, cold air, or any other substance furnished to the public; well for the production of gas, oil or other volatile or mineral substance; or other structure or improvement of whatsoever kind or character the same may be. Structure or other improvements.

The word "owner" means an owner in fee, a tenant for life or years, or one having any estate or interest in the property described in the claim, who, by contract or agreement, express or implied, in person or by another, contracts for the erection, construction or removal of the structure or other improvement or any part thereof; for the addition thereto, for the alteration or repair thereof, or for the fitting up or equipping the same from time to time for the purpose for which it is intended. Owner

The word "contractor" means one who, by contract or agreement, express or implied, with the owner or the one who acts for the owner, plans or superintends the structure or other improvement or any part thereof; or furnishes labor, skill, or superintendence thereto; or supplies or hauls materials reasonably necessary for and actually used therein; or any or all of them, whether as an architect, superintendent, builder or materialman. Contractor

The word "sub-contractor" means one who, by Sub-contractor

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contract or agreement, express or implied, with the contractor or with one who acts for him, superintends the structure or other improvement or any part thereof; or furnishes labor, skill or superintendence thereto; or supplies or hauls material reasonably necessary for and actually used therein; or any or all of them, whether as superintendent, builder or materialman; excluding, however, architects and those contracting with materialmen.

Claimant. The word "claimant" means the person who has filed or may file the claim as a lien against the property.

Property. The word "property" means the estate in fee; the freehold, leasehold or other estate or interest therein with the structure or other improvement thereon, and the fixtures and other personal property used in fitting up and equipping the same for the purpose for which it is intended; all of which belong to the owner, and against which the claim is filed as a lien.

It is within the power of the legislature to declare in a statute the sense in which it used certain words therein contained. Getz *v.* Brubaker, 25 Pa. S. C. R. 303.

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SECTION 2.

Against What a Lien may be Filed.

SEC. 2. Every structure or other improvement, and the curtilage appurtenant thereto, shall be subject to a lien for the payment of all debts due to the contractor or sub-contractor in the erection and construction or removal thereof, in the addition thereto, and in the alteration and repair thereof, and of the out-houses, sidewalks, yards, fences, walls or other enclosure belonging to said structure or other improvement; and in the fitting up or equipment of the same for the purpose for which the improvement is made, including paper-hanging, grates, furnaces, heaters, boilers, engines, chandeliers, brackets, gas and electric pipes, wires and fixtures; and for like debts contracted by such owner in the fitting up or equipment with machinery, gearing, boilers, engines, cars or other useful appliances of new or old structures or other improvements for business purposes; and for like debts contracted by such owner for rails, ties, pipes, poles and wires, and the excavation for and laying and relaying or stringing and restringing said rails, ties, pipes or wires, or erecting said poles, whether on the property described in the claim or upon other private property or public highways. But no lien shall be allowed for labor or materials furnished for purely public purposes; nor against any property held by the committee of a lunatic, the guardian of a minor or a trustee under deed, will or appointment by the court, unless by virtue of a contract made under authority of the court or of the power contained in the deed or will. Nor shall any claim for alterations or repairs, or for fitting up or equipping old structures with machinery, gearing, boilers, engines, cars or other useful appli-

Structures enumerated

No lien for work for public purposes.

Nor against property held by guardians, etc.

Lien for repairs to old structures.

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ances be valid, unless it be for a sum exceeding one hundred [dollars] *; and, in the case of a sub-contractor, unless also written notice of an intention to file a claim therefor if the amount due be not paid shall have been given to the owners or some one of them, or for him to an adult member of his family or the family with which he resides, or to his architect, agent, manager or executive or principal officer, on or before day the claimant completed his work or furnished the last of his materials. Nor shall any claim be valid against the estate of an owner by reason of any consent given by him to his tenant to improve the leased property unless it shall appear in writing signed by such owner that said improvement was in fact made for his immediate use and benefit.

Sum must exceed $100 Sub contractor to give notice.

Claim against estate of owner —Written consent necessary.

This section enumerates the structures against which the lien may be filed and gives a right of lien for some things in the nature of fittings or equipment which at one time were not the basis for a lien.

No Lien Shall be Allowed for Labor or Materials Furnished for Purely Public Purposes.

Under the Act of 1836 the buildings of public corporations were not subject to liens, Wilson *v.* Commrs. of Huntingdon Co., 7 W. & S. 197, nor were those of quasi-public corporations if essential to their public use. Guest *v.* Water Co., 142 Pa. 610. Section 46, providing for execution, seems to imply that quasi-public corporations may now be subject to liens, but see Vulcanite Paving Co. *v.* Transit Co., 220 Pa. 603.

Nor Against any Property Held by the Committee of a Lunatic, the Guardian of a Minor or a Trustee under Deed, Will or Appointment of the Court Unless, Etc.

In Johnson on Mechanics' Lien Law in Pennsylvania, pages 132, 133, 135 (1886), the writer says it had not been therefore decided whether an executor, guardian, or committee could subject the trust property to a

*The word "dollars" supplied above is not in the act as printed on page 432, laws of 1901, but the legislature undoubtedly intended the minimum amount to be one hundred dollars.

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lien. The doubt is now resolved by the Legislature against the right except where the provisions of this section have been complied with. In all cases under this Act, except alterations and repairs the lien, takes "Effect as of the date of the visible commencement upon the ground of the work of building, etc." If the date to which the lien related were anterior to the appointment of the receiver, committee, guardian, or trustee the lien may be filed. Foundry Co. *v.* Iron Co., 22 Lanc. L. R. 292; 23 Lanc. L. R. 398; 19 York L. R. 47. The lien filed against the property held by the trustee, etc., must show a contract made by authority of court or under the power given in deed or will or it will be fatally defective and stricken off. Fenner *v.* Trust Co., 13 D. R. 47. Where a receiver is appointed by the court but no authority is given him to purchase materials on the credit of an improvement he is constructing, a person furnishing him material cannot lien the improvement therefor. Bank *v.* Smith Const. Co., 218 Pa. 584.

"Written Notice of an Intention to File a Claim."

A sub-contractor claiming for alteration and repairs must give two notices before he can file a lien—first the notice in this section which must be given on or before the day he completes his work, etc., and, second, a notice of intent under § 8 with a sworn statement of the contract and amount due one month before he can file his lien. Sinnott *v.* Beard, 14 D. R. 619. The notice required in this section is the notice referred to in § 11, par. 11, of the original Act and is not supplied by the giving of the notice in § 8. East End Mantle and Tile Co. *v.* Greensburg Plumbing Co., 16 D. R. 779. It supplies the place of the Act of May 18, 1887, P. L. 118, requiring notice of intention to be given at the time of furnishing material or doing work.

"In Writing Signed by such Owner that Said Improvement Was in Fact Made for His Immediate Use and Benefit."

Consent to a tenant to improve leased property at his own cost, the improvements to remain at the end of his term will not amount to such a writing as is here required. McKown & Beatty *v.* Harris, 15 D. R. 611. The owner must state over his signature that the improvement consented to is for *his immediate use and benefit.*

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SECTION 3.

What Constitutes a Curtilage and an Erection.

Curtilage.

SEC. 3. The curtilage appurtenant to the structure or other improvement shall be such as is reasonably needed for the general purpose for which such structure or other improvement was made, and belonging to the same owner, including other structures, whether newly erected or altered or changed for such purpose and forming part of a single business or residential plant. A substantial addition to a structure or other improvement shall be treated as a new erection or construction thereof; and the addition and the structure or other improvement of which it becomes a part and the curtilage appurtenant to both shall be subject to the lien. Every adaptation of an old structure or other improvement to a new or distinct use which effects a material change in the interior or exterior thereof shall also be deemed an erection or construction thereof. Any labor or materials furnished in completely fitting up or equipping the structure or other improvement for the purpose for which it was intended, whether on the property subject to the lien or elsewhere, if actually done or used for the purpose, shall be treated as part of the erection or construction thereof. Materials placed on or near the curtilage appurtenant to the structure or other improvement, or delivered to the owner or contractor for use therein, shall be presumed to have been used therein.

Substantial addition treated as an erection.

When labor or materials furnished will be treated as part of erection.

Presumption when materials are delivered.

Curtilage.

The idea of a curtilage as contained herein is that the curtilage includes all land and buildings needed for the general purpose and forming part of an entire plant. The same idea controlled the decisions in Linden

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Steel Co. *v.* Mfg. Co., 158 Pa. 238; Short *v.* Miller, 120 Pa. 470; East Stroudsburg Lumber Co.'s Ap., 1 Pa. S. C. R. 267.

Substantial Addition.

The principle which runs throughout all cases is the "newness of structure in the main mass of the building." Hall *v.* Blackburn, 173 Pa. 310. Under prior acts where the old building remained as a substantial part of the completed structure, it was treated as an alteration and repair. Mehl *v.* Fisher, 13 Pa. S. C. R. 330; Law *v.* Devine, 13 Pa. S. C. R. 152. When the facts are ascertained or undisputed the court must determine what does or does not constitute a new building. Where the new part of the external walls and roof of a building are in the same position which had been occupied by the part torn away and the interior arrangement is unchanged the work is not a substantial addition but a work of repair and restoration. Porter *v.* Weightman, 29 Pa. S. C. R. 488. See on this section Dunbar *v.* Washington Foundry, 210 Pa. 58.

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SECTION 4.

When Owner Bound by Acts of Third Parties.

Certain owners excepted.

When objection to be made.

When ratification presumed.

Repudiation.

SEC. 4. Any owner not being a committee, guardian or trustee as aforesaid, who shall knowingly suffer or permit any person, acting as if he were the owner, to make a contract for which a claim could be filed without objecting thereto at the time, shall be treated as ratifying the act of such person acting as if he were the owner, and the claim may be filed against the real owner with the same effect if he himself had made the contract. Ratification shall also be presumed and a like subjection to lien shall follow if the owner, not being a committee, guardian or trustee as aforesaid, subsequently learning of such contract or of work being done upon his property, shall not within ten days thereafter repudiate the same, either by notice to the contractor and sub-contractors or by posting such repudiation on the most public part of the structure or other improvement.

Ratification.

This section, while speaking of ratification, seems to really involve the principle of estoppel. If one who owns or claims property stands by in silence and sees another act on the assumption that a third person is the owner he cannot subsequently, when he has thus prejudiced the second, claim to be owner and repudiate what has been done. Had he spoken, the second person might not have made a contract or done any work. By his silence he is estopped. Sinnott *v.* Beard, 14 D. R. 619; 21 Montg. Co., 93; 10 Northampton Co. 16.

Ratification is presumed, if after the contract is made and work done, the owner learns of it and does not within ten days repudiate the contract as provided in the Act.

Third Party Acting as Owner.

Where a married woman permits her husband to act as owner and makes him her agent to contract, a sub-contractor may file a lien under this section and notices served on the husband of intention to file a claim, and that it has been filed, will be good. Miller *v.* Fitz, 17 D. R. 933.

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SECTION 5.

Invalid Contract.

SEC. 5. A contract made by the owner with one not intended in good faith to be the contractor for the structure or other improvement shall have no legal effect except as between the parties thereto, even though written, signed and filed as hereinafter provided; but such contractor, as to third parties, shall be treated as the agent of the owner.

No legal effect except between the parties.

Contractor treated as agent.

Contract Not in Good Faith.

This section enacts into statute law the rule laid down by our Supreme Court in Ballman *v.* Heron, 169 Pa. 510, that if the contract is not made in good faith but is entered into for the purpose of misleading and defrauding sub-contractors and material men, it should be held invalid.

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SECTION 6.

Work or Materials Furnished for Public Purposes.

Sub-contractor to give notice.

SEC. 6. Where labor or materials are furnished for any structure or other improvement for purely public purposes, in lieu of the lien given by this Act, any sub-contractor who has furnished labor or materials thereto may give a written and duly sworn notice to the Commonwealth, or any division or sub-division thereof, or any purely public agency thereunder, being the owner of the structure or other improvement setting forth the facts which would have entitled him to a lien as against the structure or other improvement of a private owner; whereupon, unless such claim be paid by the contractor or adequate security be given or have been given to protect all such claimants, the Commonwealth, or the division or sub-division thereof, or purely public agency thereunder, shall pay the balance actually due the contractor into the Court of Common Pleas of the county in which the structure or other improvement or the *principal part thereof* is situate for distribution to such parties as would be entitled thereto were it paid into court in the case of a private owner; and the Commonwealth hereby does, and any division or sub-division thereof, or any purely public agency thereunder, may, require that any contract for public work shall, as a condition precedent to its award, provide for approved security to be entered by the contractor to protect all such parties. If a dispute arises as to the balance actually due, the amount admitted shall be paid into court and a suit brought to recover the disputed part in the name of the contractor to the use of the parties interested, and any amount recovered shall be distributed as above set forth.

What notice to contain.

Proceedings where claim is unpaid.

Payment into Court.

Security may be required.

Provision if amount disputed.

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By the Act of April 22, 1903, P. L. 255, the original section was amended by striking out the word "park" and inserting the words "principal part thereof" where italicized.

Notice.

A sub-contractor who has furnished material for a city improvement and who desires to establish a claim against a public improvement must give the preliminary notice of intention such as is required by § 8 in the case of a private owner. Bank *v.* Smith Const. Co., 218 Pa., 581.

Security.

If a claim is filed by a sub-contractor on a public improvement, *e. g.*, a State road, the Commonwealth or sub-division may pay over the entire sum taking adequate security to protect such parties. If the amount is disputed it should be paid into court. Opinion of Attorney General, 9 Dauphin Co. 242.

The above section as has been seen, provides for proceedings by a sub-contractor where labor or material has been furnished for public purposes and is broad enough to cover claims against the Commonwealth or any division or sub-division thereof.

By an Act approved May 6, 1909, a method was provided whereby "moneys due sub-contractors for labor and materials furnished for and in the construction of municipal work or public improvements, may be secured and recovered."

This Act does not purport to be a supplement to the Mechanics' Lien Act of 1901, but it would seem that so far as municipal contracts are concerned, the remedy provided by it, is substituted in place of Section 6 of the Act of 1901. As the Act of 1909 does not apply to anything save contracts for the construction of municipal work, it cannot be said that the sixth section of the Act of 1901 is entirely abrogated.

The text of the Act of 1909 is as follows:

SEC. 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same, That when labor or materials are furnished for and in the construction of any municipal work or public improvement, any sub-contractor who has furnished labor or materials

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therefor may, at any time before the construction of such work or improvement is completed and accepted by the municipality, file a written notice of a lien, duly sworn to by the sub-contractor, or by one of his or its agents or officers, with the head of the department or bureau, if any, having charge of such construction, and with the controller or financial officer of the municipality, or other person or officer charged with the custody and disbursement of the municipal funds applicable to the contract under which the claim is made.

The notice shall state:

1. The name and residence of the claimant or claimants.

2. The name of the city, borough or other municipality owning, controlling or being responsible for said work or improvements.

3. The name of the party with whom the claimant contracted and for whom the labor was performed or material furnished.

4. A copy of claimant's contract if in writing or a statement of the terms and conditions thereof if any of them were oral.

5. A detailed statement of the kind and character of the labor or materials furnished and the prices charged for each.

6. The sum claimed to be due or to become due and the date when due, together with such description of the work or improvements as may be necessary for the purpose of identification.

The controller or financial officer of the municipality, or other person or officer with whom such notice is required to be filed, shall enter the same in a book to be provided for that purpose, to be called the "Lien Book", such entry to consist of the name and residence of the claimant or claimants, the name of the contractor, the amount of the claim, the date of filing,

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and a brief designation of the contract under which the claim arose.

SEC. 2. Such claim so filed shall be a lien for the principal and interest of the value or agreed price of such labor or materials and unpaid upon the moneys of the city, borough or other municipal or quasi-municipal corporation applicable to the construction of such improvement.

SEC. 3. Such lien shall not continue for a longer period than sixty days from the time of the filing of the aforesaid notice, unless an action in assumpsit to recover the amount so claimed is commenced within that time by the claimant or claimants against the contractor, and written notice of the pendency of such action is filed with the financial officer of the municipality with whom the notice of the claim is by this act required to be filed.

SEC. 4. A lien against the amount due or to become due a contractor from such municipality as aforesaid may be discharged as follows:

(a) If suit has not been commenced, by filing with the financial officer of the municipality a certificate, under oath, of the claimant or his successor in interest that the lien is discharged and the claim satisfied.

(b) By lapse of time, when sixty days have elapsed since filing of the notice of the claim and no notice that action has been begun to enforce the claim has been filed with the said financial officer of such municipality.

(c) By satisfaction of a judgment entered in an action begun to enforce such claim and said lien.

(d) Either before or after the beginning of an action by the contractor executing a bond to the municipality for the use of the claimant, with such surety

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or sureties and in such sum as the Court of Common Pleas of the proper county, or a judge thereof, may direct, not less, however, than the amount claimed in the notice of lien, conditioned for the payment of any judgment which may be recovered in an action to enforce the claim. Such bond shall be approved and marked filed in open court, or before a judge at chambers, of which time and place of presenting said bond for approval and filing at least five days prior notice shall be given to the claimant. Upon approval and filing of said bond, the court, or judge thereof, shall make an order discharging said lien.

Said order and bond when marked filed, shall be entered by the prothonotary of the proper court, at the proper number and term of the suit entered to enforce said lien, or if prior to suit, then they shall be entered at the proper number and term in the appearance docket, and shall be indexed as action in assumpsit on bonds are by law now required to be indexed, and any suit brought on said bond thereafter shall take the number and term of said bond.

SEC. 5. Sub-contractors' liens filed under this act and claiming under the same municipal contract shall have no preference over each other, but all such liens or claims shall have priority or preference over other liens or claims on said funds, according to the date of filing notice of said claims, as provided in section one of this act:

Provided, however, That this act shall not be construed to affect the priority that now is or may hereafter be given to liens against said fund for wages for labor owing by the contractor for work done under such municipal contract.

SEC. 6. All acts or parts of acts inconsistent herewith are hereby repealed.

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SECTION 7.

Ruling Claimant to File Claim.

SEC. 7. After the right to file a claim is complete, any owner or contractor may enter a rule as of course in the office of the prothonotary of the Court of Common Pleas of the proper county, requiring any party named to file his claim within fifteen days after notice of such rule, or be forever thereafter debarred from so doing. Such rule shall be entered and indexed in a docket to be known as the mechanics' lien docket. A failure to file a claim within the time specified shall operate to wholly defeat the right so to do. If a claim be filed, it shall be entered as of the court, term and number of the rule. Pending such rule, and until the claim is finally defeated, the owner may, unless approved security be given to indemnify him from loss, retain out of any payments due or to become due to the contractor, a sum sufficient to protect him from loss.

Rule "of course."

Claim to be filed in 15 days.

Rule entered in Mechanics' Lien Docket.

Claim—How entered.

How owner protected.

The defendant in a lien prior to the Act of 1901 was able to force the issuance of a Sci. Fa. thereon by entering a rule. This section extends the right so that the owner or contractor may now force any one asserting any adverse claim to file such claim without waiting the expiration of the time allowed ordinarily.

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SECTION 8.

Notice by Sub-Contractor of Intention to File a Claim.

What notice to contain. To be sworn to. When it must be served. When notice waived. Service of notice. Protection to owner.

SEC. 8. Any sub-contractor intending to file a claim must give to the owner written notice to that effect, together with a sworn statement setting forth the contract under which he claims, the amount alleged to be still due, and how made up, the kind of labor or materials furnished, and the date when the last work was done or materials furnished. Such notice and statement must be served at least one month before the claim is filed, and within three months after the last of his work was done or materials furnished, if he has six months within which to file his claims, and within forty-five days thereafter, if he has but three months within which to file it; but no such notice or statement need be served if the sub-contractor be ruled to file his claim before the expiration of said periods. Service may be made personally on the owner anywhere; but, if he cannot be served in the county where the structure or other improvement is situate, such notice and statement may be served on his architect or agent, or the party in possession of the structure or other improvement; and if there be no architect, agent or party in possession, it may be posted on the most public part of the structure or other improvement. After such notice, and until the claim is finally defeated, the owner may, unless approved security be given to indemnify him from loss, retain out of any payment due or to become due the contractor, a sum sufficient to protect him from loss.

This section is mandatory and compliance with its provisions is a condition precedent to the right to file a claim. Keeley *v.* Jones, 35 Pa. S. C. R. 642.

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Failure to Give Notice.

Failure to give notice under this section is fatal to the claim. Crider *v.* McCafferty, 13 D. R. 638.

Contractor.

A contractor is not required to give notice under this section. Its provisions are confined to the sub-contractor. Sinnott *v.* Beard, 14 D. R. 619.

Contents of Notice.

The notice given should be definite, containing specific information as to the character and details of the claim and contract, substantially covering the requirements of a declaration in assumpsit under the Acts of 1806 and 1887. Howard *v.* Allison, 27 C. C. 262; 12 D. R. 117. It is essential that the notice set forth the date when the last work was done or material furnished. Failure to do so is fatal to the claim. Wolf *v.* R. R., 29 Pa. S. C. R. 439; 13 D. R. 791; 30 C. C. 501. A notice which fails to show the contract and amount of labor and material, lumping them in a single charge is insufficient. This is not waived by going to trial. James *v.* Homoyer, 15 D. R. 957; McVey *v.* Kauffmann, 223 Pa. 125. A notice by a sub-contractor to the owner under this section averring that the amount due is "$260 for painting and glazing work and material done by me to said house," does not show how the amount claimed to be due is made up and the kind of labor or materials furnished. Mock *v.* Roscoe, 14 D. R. 774.

Sworn Statement.

The sworn statement accompanying the written notice to the owner need not contain an itemized statement of the prices charged for materials furnished by him for the work. Werner & Co. *v.* Chemical Co., 11 D. R. 722.

Lumping Charge.

A lumping charge set out in a notice of intention to file a claim is defective. The owner is entitled to have such information as will enable him to tell whether prices charged and time consumed are fair and reasonable. King *v.* Church, 14 D. R. 265. The substantial covenants of the contract must be set out in the notice, under oath. Collins *v.* R. R., 29

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Pa. S. C. R. 547. Certainty to a common intent and substantial compliance with the Act is enough. Day *v.* R. R., 35 Pa. S. C. R. 586. Where the owner and builder of a house conveys it before completion and puts the deed of record and thereafter makes a contract for plumbing, the contractor for plumbing must give notice under this section. The former owner is contractor as to the plumber. Getz *v.* Brubaker, 25 Pa. S. C. R. 303.

Striking Off Lien.

The lien will not be stricken off on motion of the contractor because notice was not given where the owner does not object. Funck *v.* Iron Co., 14 D. R. 490; 7 Dauph. Co. 232; 30 C. C. 256. Whether the form and substance of the notice are in compliance with the Act are matters to be determined at the trial. Thirsk *v.* Evans, 211 Pa. 239; Am. Car Co., *v.* Water Co., 215 Pa. 520. It is only where the notice is clearly insufficient and so disclosed by the record that the Court can strike the lien off for violation of this section. Beam *v.* Geiselman, 16 D. R. 579.

The exhibits and affidavit attached to the sub-contractor's notice to the owner are a part of it and the sufficiency of the notice is to be determined by an examination of the notice, exhibits and affidavits. Este *v.* R. R., 27 Pa. S. C. R. 521; 13 D. R. 451; 30 C. C. 209.

Service.

Notice of intention under this section cannot be served by leaving the notice with an adult member of the family at the owner's dwelling. Maddock *v.* McGann, 12 D. R. 701; 16 York L. R. 184. Notice under this section may be served on the owner personally or if he cannot be served in the county, etc., the service may be made upon the architect, agent or party in possession or posted. It cannot be served on a clerk at the owner's place of business. Lofink *v.* Schuette, 14 D. R. 558. The notice is of no effect if it be not served ***within*** the time limited in the section. Stover *v.* Foltz, 13 D. R. 636.

This section has been amended by the Act of March 24, 1909, with reference to the contents of the notice and the mode of service. The text of the Act is as follows:

"Any sub-contractor intending to file a claim must give to the owner written notice to that effect, verified by affidavit, setting forth the name of the party with whom he contracted, the amount alleged to be still due, the nature of the labor or materials furnished and the date when the last work was done or last materials furnished. Such notice must be served at least one month before the claim is filed and within three months after the last of his work was done or materials furnished if he has six months

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within which to file his claim, and within forty-five days thereafter if he has but three months within which to file it, but no such notice need be served if the sub-contractor be ruled to file his claim before the expiration of said periods. Service may be made personally on the owner anywhere, or such notice may be served on an adult member of his family or of the family with which he resides, if such owner resides within the county where the structure or other improvement is situate. If he resides without the county where such structure or improvement is situate, then such notice may either be served on his architect or on the party in possession of the structure or improvement, or it may be posted on some public part of the structure or other improvement. After such notice and until the claim is finally defeated, the owner may, unless approved security be given to indemnify him from loss, retain out of any payment due or to become due the contractor a sum sufficient to protect him from loss."

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SECTION 9.

Protection to Owner.

Owner to notify contractor.

SEC. 9. An owner served with the notice and sworn statement, aforesaid, may serve a copy thereof upon the party personally liable for the debt therein referred to, with notice that, unless such claim is settled within fifteen days thereafter, or he is furnished with a sworn statement setting forth wherein it is intended to be disputed, he may pay the same, and deduct the amount thereof from the contract price or hold the contractor personally liable for any loss. If the contractor approve the claim or fail to serve a sworn statement of defence thereto, the owner may, before the filing of the claim or at any stage of the proceedings thereon, pay the same and deduct the amount thus paid from the contract price, or hold the contractor liable for any loss. Upon payment of his claim, the sub-contractor shall assign or transfer to the owner his claim against the contractor and any note or other collateral security he may have received for its payment. If the contractor give notice of a defence thereto, it shall be his duty to defend any claim filed at his own expense, and if he fails or refuses so to defend or continue defending it, he shall be liable to the owner for all costs, expenses, charges, and the reasonable counsel fees necessary for making such defence, whether successful or not.

When owner may pay claim.

Sub-contractor to make an assignment.

Contractor bound to defend.

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SECTION 10.

Prosecution and Filing of Claims.

SEC. 10. In the case of tenancies or leasehold estates, of alterations and repairs, and of fitting up or equipping old structures with machinery, gearing, boilers, engines, cars, or other useful appliances, the claim must be filed in the Court of Common Pleas of the county or counties in which the structure or other improvement is situate, within three months after the claimant's contract or agreement is completed; and in all other cases within six months thereafter; and when filed, it shall be entered and indexed in the mechanics' lien docket. Upon it a writ of scire facias must issue within two years, unless the owner, by writing filed before the expiration of that time, waive the necessity for so doing for a further period, not exceeding three years; and a verdict must be recovered or judgment entered on the scire facias within five years after it is issued. Final judgment must be entered on the verdict within five years after its recovery. After judgment is entered, it must be revived, by writ of scire facias to revive the judgment or by judgment thereon, within each recurring period of five years. If a claim be not filed within the time aforesaid, or if it be not prosecuted in the manner and at the times aforesaid, it shall be wholly lost.

Estates less than freehold claim for alterations, etc., to be filed within 3 months.

Other cases 6 months.

Sci. Fa. to issue in 2 years.

Owner may file waiver.

Verdict or judgment in 5 years.

Final judgment in 5 years.

Revival every 5 years.

Affidavit.

It is unnecessary to file an affidavit as to real owners under Act of July 9, 1901, P. L. 614, § 11 in order to issue a Sci. Fa. sur mechanics' lien. Davis *v.* Church, 15 D. R. 946.

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SECTION 11.

Contents of the Claim.

SEC. 11. Every person entitled to such lien shall file a claim, or statement of his demand, in the office of the prothonotary of the Court of Common Pleas of the county in which the building may be situate, which claim shall set forth:

1. The names of the party claimant and of the owner, or reputed owner, of the building, and also the contractor, architect or builder.

2. The amount or sum claimed to be due, and the nature or kind of the work done, or the kind and amount of materials furnished, or both; and the time when the materials were furnished, or the work done, or both, as the case may be.

3. The locality of the structure or other improvement, with such description thereof as may be necessary for the purpose of identification, and a description of the real estate upon which the same is situate.

The above is the language of the Act of April 17, 1905, P. L. 172, amending the 11th section of the Act of 1901.

Contents.

The Act of April 17, 1905, omits paragraph 4, section 11 of the Act of 1901, and where a claimant in preparing his lien follows the form of the Act of 1901, but omits the provisions of paragraph 4, the lien is good if otherwise not defective under the Act of 1905. Sash Co. *v.* Thompson, 17 D. R. 996.

In a mechanics' lien for work and material done and furnished in

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plumbing and gas fitting, filed under the Act of 1905, it is sufficient to set out the nature and kind of work done and the dates of the first and last items thereof, without setting out the items in detail or separating the charge for labor from that for material. Soffel *v.* Jones, 17 D. R. 790.

Notice.

In a sub-contractor's claim filed under this Act it is not necessary to set out when and how notice of intention to file the claim was given. Miller *v.* Fitz, 17 D. R. 933.

As many liens have been filed under the Act of 1901 on which liens proceedings may still be had, it may not be improper to notice the text of Section 11 of that Act and the decisions thereunder.

The text is as follows:

Who may file claim.

SEC. 11. Such claim may be filed by any person, persons, firm, association or corporation furnishing labor or materials to such structure or other improvement, and shall set forth—

I. The name of the claimant.

II. The name of the owner of the structure or other improvement and property.

III. The name of the party with whom the claimant contracted, and, if not the owner, then whether or not such party contracted directly with the owner.

IV. A copy of his contract or contracts, if in writing, or a statement of the terms and conditions thereof if any of them are verbal.

What claim should set forth.

V. The kind and character of the labor or materials furnished, or both, and whether the lien is claimed against the fee itself or a lesser estate or interest therein.

VI. When the contract is with other than the

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owner or not for an agreed sum, a detailed statement of the kind and character of the labor or materials furnished, or both, and the prices charged for each thereof.

VII. The amount or sum claimed to be still due and chargeable against the particular property, showing how that amount or sum is made up, and whether the claimant has any note or other collateral security for his claim, and if so what it is.

VIII. A description of the property against which the lien is claimed, together with such description of the structure or other improvement as may be necessary for the purpose of identification.

IX. When the claimant first furnished labor or materials thereto and when he last did so.

X. From what date the lien is claimed, and if from a time preceding the filing of the claim, the reason why such date is selected.

XI. When the contract is with other than the owner, or the claim is for alterations or repairs, or for fitting up old structures with machinery, gearing, boilers, engines, cars or other useful appliances, when and how notice was given to the owner of an intention to file the claim.

Claim to be sworn to.

Attached to the claim shall be a statement, signed and sworn to or affirmed to by the parties claimant, or some one of them, or by one of their principal or executive officers, or by some one for them, if the facts be better known by such third party, that all the facts therein set forth are true so far as they are within his own knowledge, and, so far as they are derived by in-

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formation from others, that he has made a careful examination and inquiry as to the truth thereof, and, as a result of such examination and inquiry, he believes them to be true. If the affidavit be made by a third party, the reason therefor shall be stated in the affidavit.

The requirements of Section 11 are mandatory. Crider *v.* McCafferty, 13 D. R. 638.

Contract—Specifications.

Specifications if made part of the contract must be filed with it as part of the lien at least so far as they apply to the work for which the lien is filed, but plans need not be so filed. Knelly *v.* Horwath, 208 Pa. 487.

Where the agreement between contractor and sub-contractor refers to the contract of the contractor with the owner and provides that it is to be considered as attached to the contract with the sub-contractor, a lien filed by the sub-contractor, which sets out the contract between the contractor and sub-contractor and that the sub-contractor has not in his possession copies of the contract, plans, etc., so referred to and that he has been refused them complies with the law. Thirsk *v.* Evans, 211 Pa. 239; James *v.* Homoyer, 21 Montg. L. R. 88; I Leh. L. J. 211.

Specifications need not be filed with the lien when they are not incorporated in and made part of the contract. Warren *v.* Johnston, 33 Pa. S. C. R. 617.

Contract—Verbal.

The contract must be set out and where it is alleged to have been verbal and to have been superseded by a written agreement, the lien must contain the written contract. Guarantee B. & L. Assn. *v.* Connor, 216 Pa. 543.

A lien is defective which does not give the terms and conditions of the verbal contract. Mulherin *v.* Jones, 5 Lack. Jur. 72; 9 North. 219.

A lien claiming for items not covered by the written contract must set out the terms and conditions of the verbal contract as to such items or the items will be stricken out. Warren *v.* Johnston, 33 Pa. S. C. R. 617.

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The Court on a rule to strike off a lien cannot assume that a verbal contract alleged, contained terms or conditions not set out in the lien. Burns *v.* Judge, 12 Luz. Leg. Reg. R. 425.

Where the contract of the owner and contractor has not been filed and no notice of its terms has been given to the sub-contractor he is not obliged to file it as part of his lien. He is not subject to it. Hedden *v.* Wainwright, 20 Montg. L. R. 37.

Bill of Particulars.

The bill of particulars annexed to a mechanics' lien and filed therewith is to be taken as part of the lien. American Car & Foundry Co. *v.* Water Co., 215 Pa. 520.

Fee or Lesser Estate.

An averment that the lien is claimed "against the building and curtilage" does not comply with the Act which requires the lien to state whether it is claimed against the fee or lesser estate. Maddock *v.* McGann, 12 D. R. 701; 4 Lack. Jur. 34; 16 York Leg. Rec. 184.

Detailed Statement.

The requirement of "a detailed statement" when the contract is with other than the owner or not for an agreed sum is not complied with by a bill for "amount due under said written contract, etc." King *v.* Church, 14 D. R. 265; 32 C. C. 288.

Where the contract is for an agreed sum though with other than owner, a detailed statement is not required. Maddock *v.* McGann, 12 D. R. 701; 4 Lack. Jur. 34; 16 York Leg. Rec. 184.

A lien by a contractor on a contract with the owner for furnishing material and labor and construction of a dwelling-house, need not set out a detailed statement of the kind and character of labor, etc., furnished and prices charged for each thereof. Warren *v.* Johnston, 33 Pa. S. C. R. 617; VanSciver *v.* Churchill, 35 Pa. S. C. R. 212.

Note or Collateral.

Taking a note is not a waiver of the right to file a lien in the absence of an agreement to that effect. American Car Co. *v.* Water Co., 221 Pa. 529.

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Description of Land.

The adequacy of description of land is for jury on the trial of the Sci. Fa. Morrison *v.* Bank, 9 Dela. Co. 573.

Claimant furnished lumber to be used in a building. The owner, without the knowledge and consent of the claimant sold the lumber and shipped it elsewhere. Claimant filed a lien within six months from the furnishing of the material but more than six months from the date of furnishing the last material actually put in the building. Held good to the extent that the lumber actually went into the building. Brubaker's Assigned Estate, 19 York L. R. 29.

Notice.

The lien must show when notice was given and the notice must comply with the Act or the lien will be bad. Wolf *v.* R. R., 29 Pa. S. C. R. 439.

Notice of intention to file a lien need not be given by a contractor. This section only refers to those claimants who are by the Act required to give notice. Sinnott *v.* Beard, 14 D. R. 619; 21 Montg. 93; 10 North. 16.

An averment of the date when and manner in which notice was given will suffice. A copy of the notice need not be set out in the lien. American Car Co. *v.* Water Co., 215 Pa. 520; McVey *v.* Kauffmann, 223 Pa. 125.

A sub-contractor's lien must show when and how notice of intention under § 2 was given. East End Tile Co. *v.* Plumbing Co., 16 D. R. 779.

Affidavit.

An affidavit made by the book-keeper of claimant setting out that he is book-keeper and has full knowledge of the facts set forth complies with the Act. Billmeyer *v.* Brubaker, 17 York L. R. 113.

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SECTION 12.

Kinds of Claims.

Claim for continuous work.

Single claim.

No apportioned claim allowed.

SEC. 12. If the labor or materials be furnished continuously in the erection and construction of, addition to, or removal of a structure or other improvement, the claimant may file a single claim, though furnished under more than one contract, with the same effect as if furnished continuously under a single contract. A single claim may be filed against more than one structure or other improvement, if they are all intended to form part of one plant. No apportioned claim shall hereafter be allowed, but separate claims, with the amount due determined by apportionment, may be filed as herein set forth.

Single Claim.

The provision as to filing a single claim only applies where the several contracts are between the same parties. Sash Co. *v.* Thompson, 17 D. R. 996.

One Plant.

This phrase is used in the ordinary sense of a property owned or used in carrying on some trade or business but does not apply to a row of dwellings. Todd *v.* Gernert, 223 Pa. 103.

Apportioned Claim.

These are no longer allowed except as above provided. Todd *v.* Gernert, *supra.*

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SECTION 13.

Incumbrance of Liens.

Claim for repairs etc., takes effect on filing.

SEC. 13. The lien of every claim for the alteration of or repair to a structure or other improvement, or for fitting up old structures with machinery, gearing, boilers, engines, cars or other useful appliances, shall take effect as of the date of its filing, and shall be paid out of the proceeds of a judicial sale of the property described therein in preference to any estate, charge or lien of which the claimant had not actual or constructive notice at that time, except municipal or tax claims, and the exemption allowed by law; but such lien shall be wholly lost if the property be conveyed in good faith and for a valuable consideration prior to the filing of the claim. In all other cases the lien of the claim shall take effect as of the date of the visible commencement upon the ground of the work of building the structure or other improvement, and shall be paid out of the proceeds of a judicial sale of the property described therein in preference to any estate, charge or lien of which the claimant had not actual or constructive notice at that time, except municipal and tax claims, and the exemption allowed by law. An estate, charge or lien of which the claimant had actual or constructive notice before the date of such visible commencement upon ground, if given to secure advances of money knowingly to be furnished for the purpose of making the improvement in whole or in part, shall have, with prior liens and incumbrances, a preferential claim upon the funds raised by a judicial sale of said property to the extent only of the actual value of the property immediately prior to such visible commencement of the work; but the proceeds of such

Preference.

Exceptions.

Bona fide conveyance.

Claim in other cases takes effect on breaking ground.

Preference.

Exceptions.

Advance money, mortgages preferred.

To what extent.

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What interest is bound.

sale above such value shall be applied to the payment of the mechanics' lien in preference to such estate, charge or lien. The lien of every such claim shall bind only the interest of the party named as owner of the property at the time of the contract or subsequently acquired by him, but no forfeiture or surrender of a leasehold or tenancy, whether before or after filing the claim, shall operate to prejudice its lien against the fixtures, machinery or other similar property described therein.

Forfeiture of lease-hold.

A lien may be amended which does not set out the date from which it is claimed. The Act fixes the time in alterations so that the amendment is formal. Sinnott *v.* Beard, 14 D. R. 619.

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SECTION 14.

Proceedings to Ascertain Value of Property.

SEC. 14. Upon the petition of any claimant having or being entitled to a lien, the actual value of the property bound by such advance money, estate, charge or lien, and the amount of the advances actually made shall be determined prior to a judicial sale of the property—a stay being granted for that purpose should justice so require; but if application be not made prior to the sale, the same shall be determined upon the distribution of the fund realized thereby. And the court, upon petition of any such claimant, may also require that a tract of land about to be sold at judicial sale, part of which is bound by or liable for such claim, shall be so divided that the part which is so bound or liable shall be sold separately from the rest of the tract if it can equitably be done; and if not, then it, or an auditor appointed after the sale shall determine the relative value of the part bound by and that free of the claim, and the fund realized shall be distributed accordingly.

Petition.

Stay may be granted.

Where part of land liable to lien.

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SECTION 15.

Waiver of Right to File a Claim.

By agreement or estoppel.

Agreement for no one to file claim.

Evidence admissible against sub-contractor.

Evidence admissible to show waiver of provision.

Effect of credit or collateral security.

SEC. 15. The right to file a claim may be waived by agreement between the claimant and the party with whom he contracts, or by any conduct which operates to equitably estop the claimant. If the legal effect of the contract between the owner and the contractor is that no claim shall be filed by anyone, such provision shall be binding; but the only admissible evidence thereof, as against a sub-contractor, shall be proof of actual notice thereof to him, before any labor or materials furnished by him; or proof that a duly written and signed contract to that effect has been filed in the office of the prothonotary of the Court of Common Pleas of the county or counties where the structure or other improvement is situate, prior to the commencement of the work upon the ground, or within ten days after the execution of the principal contract, or not less than ten days prior to the contract with the claimant, (and the prothonotary shall index the same making the contractor the defendant and the owner the plaintiff). The only admissible evidence that such a provision has, notwithstanding its filing, been waived in favor of the claimant, shall be a written agreement to that effect signed by all those who under the contract are interested antagonistically to the claimant's allegation. The giving of credit or the receiving of collateral security shall not operate to waive the right to file a claim, but shall delay voluntary proceedings thereon by the claimant until the time of credit shall have expired. A release signed by the claimant shall not operate as a waiver of the right to file a claim for labor or materials subsequently furnished unless it shall appear thereby that such was the

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express intent of the party signing the same, but such release shall be so construed as to fully carry out that intent. Operation of release.

Indexing.

The words in parenthesis are introduced by the amendatory Act of April 24, 1903, P. L. 297. Prior to the passage of the amendatory Act, the contract had been indexed in some counties as a judgment against the owner following the practice under the Act of June 26, 1895, P. L. 369. The language of Sec. 18 directing the contract to be entered in the judgment index "in the name of the contractor" did not say as a lien against him or with the contractor as defendant. The contract must be indexed in the judgment lien index. King v. Reese, 11 D. R. 357; 8 Dela. Co. 304; 15 York Leg. Rec. 86.

Striking off Claim.

A lien regular on its face will not be stricken off because filed in violation of a contract, filed of record under this section. To do so would deprive the claimant of his right to attack and contest the bona fides of the contract of waiver. King *v.* Reese, *supra.*

Bill to Restrain.

A court of equity has no jurisdiction to restrain by injunction a sub-contractor from filing a mechanics' lien in violation of a duly filed contract. There is an adequate remedy at law. Wolf *v.* Glassport Lumber Co., 210 Pa. 370. In view of this case, the decision of Swartz, J., in Montello Brick Works *v.* Hoot, 14 D. R. 8; 19 Montg. Co. 188, can no longer be considered an authority.

Agreement against Liens.

A contract duly filed of record in the prothonotary's office containing a stipulation as follows: "The contractor covenants and agrees that he will not permit any person or persons to file any mechanics' liens for materials furnished and labor performed to said building and premises nor will he file any liens himself," will prevent any sub-contractor from filing a lien. Glassport Lumber Co. *v.* Wolf, 213 Pa. 407, approving Nice *v.* Walker, 153 Pa. 123. A contract to furnish "a good and sufficient release from liens" is equivalent to a contract not to file a lien and will ex-

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clude a lien on the part of the one bound to deliver the release. Wyss *v.* Beaver Valley Co., 216 Pa. 443.

A covenant against liens procured by false and fraudulent representations made at the very time the contract was executed will not be enforced. Vansciver *v.* Churchill, 35 Pa. S. C. R. 212.

Where a purchaser of a building at a bankrupt's sale has notice from the record that there is an apparent valid subsisting mechanics' lien of record against the property, the burden is upon him to show diligent inquiry if he desires to be relieved from the payment of the lien because of an outstanding release, not of record, and not intended for his protection; and the question whether he has made such diligent inquiry and from the proper sources of information is for the jury. Kreusler *v.* Glukoff Company, 223 Pa. 174.

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SECTION 16.

Agreement for Payment in Other than Legal Tender.

SEC. 16. Where a contract, between the owner and contractor, provides that payment shall be made in other than legal tenders, such contract shall have no legal effect as against the sub-contractor or those claiming under him, unless actual notice thereof shall have been given the claimant or use-claimant before any labor or materials furnished by him; or, a duly written and signed contract to that effect shall have been filed in the office of the prothonotary of the Court of Common Pleas of the county or counties where the structure or other improvement is situate, prior to the commencement of the work upon the ground, or within ten days after the execution of the principal contract, or not less than ten days prior to the contract with the claimant. Such provision of the contract shall not bar the right to file a claim to recover the amount due in legal tenders; but the owner may file a petition, under oath or affirmation, setting forth the facts, under the term and number of the claim first filed, and making all the parties who have filed or are entitled to file claims parties respondent, and praying appropriate relief; whereupon the court shall grant a rule to show cause why the relief prayed for should not be allowed. The court shall, from the pleadings, aided as to the material disputed facts, if any, by depositions or by a hearing at bar, make such order or decree as the facts shall warrant. If the court shall find that payment was agreed to be made in other than legal tenders, it shall decree that upon the owner complying with his part of the agreement, within such time as the court shall designate, all the claims filed or which shall thereafter be filed by the

No effect against sub-contractor unless, filed, etc.

No bar to filing claim.

Owner may petition.

Rule to show cause may be granted.

Proceedings.

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Decree.

parties respondent, as to whom the owner has not waived his right, shall be stricken from the record; and the payments to be made by the owner in other than legal tenders shall be made liable by the decree of the court to the parties interested, in the same manner and to the same extent as the structure or other improvement itself would have been if no such provision had appeared in the contract, and distribution shall be made as herein set forth and upon equitable principles. Other parties interested may intervene at any time before actual distribution. Should other parties than the respondents subsequently file claims, such claims shall be stricken off, upon motion of the owner, unless it be proved that the claimant did not know of the pendency of said proceedings, did not participate in the proceeds of the payments actually made, through ignorance thereof; or, that the owner knew of the rights of the claimant in time for him to intervene, and yet gave him no notice of the proceedings, in which event the claim shall be proceeded on as if no such provision appeared in the contract.

Other parties may intervene.

Proceedings.

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SECTION 17.

Agreement for Payment at Specified Times.

When binding against sub-contractor.

SEC. 17. When the contract between the owner and the contractor provides that payments shall only be made at given times, such contract shall be efficacious as against the sub-contractor or those claiming under him, if actual notice thereof shall have been given to the claimant or use-claimant, before any labor done or labor or materials furnished by him; or a duly written and signed contract to that effect shall have been filed in the office of the prothonotary of the Court of Common Pleas of the county or counties where the structure or other improvement is situate, prior to the commencement of the work upon the ground, or within ten days after the execution of the principal contract, or not less than ten days prior to the contract with the claimant. If the contract be written, signed and filed within the times above set forth, and the owner complies with his part thereof, the structure or other improvement shall not be liable to claims in the aggregate in excess of the balance of the contract price remaining unpaid, or which should have remained unpaid, whichever is greatest in amount at the time notice was first given the owner of an intention to claim a lien upon such property; such notice, if given in good faith, inuring to the benefit of all claimants. The court shall stay all executions upon judgments recovered upon such claims if payments are not due, and the owner may pay into court the whole balance found due under said contract, in accordance with the provisions of this section; whereupon the court shall order the claims to be stricken off, upon petition, answer and replication, in the manner and with the effect provided herein in cases where payment is to be made in other than legal tenders.

Structure liable to certain claims—Amount.

When execution stayed.

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SECTION 18.

Sub-Contractors Bound by Agreements Filed.

Bound to extent of notice.

Entered in judgment index.

SEC. 18. The sub-contractors shall be bound, to the extent of the notice given, by the contract as signed and filed, though it be but part of the entire contract or contracts between the owner and contractor. When filed, the prothonotary shall enter it in the judgment index in the name of the contractor, and shall be responsible for any neglect of duty in that regard as in other cases.

This section is explained and rendered unambiguous by Act of April 24, 1903, P. L. 297, directing that the contract waiving liens shall be indexed with the contractor as defendant and the owner as plaintiff.

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SECTION 19.

Contracts Impairing Rights of Claimants.

SEC. 19. When any contract for labor or materials to be furnished to a structure or other improvements shall be so drawn as to affect or in any manner impair the rights and remedies given to a claimant or use-claimant, or to postpone the time of payment for a period exceeding six months after the last of the labor or materials are furnished, it shall be the duty of the party making such contract, whether duly written, signed and filed or not, to give actual notice thereof to those contracting with him, prior to the time of the making of the contract with or the employment of such party. A failure so to do shall be sufficient ground for rescission of the contract by the party theretofore ignorant of the fact, and the recovery by him pro rata, by lien or otherwise, for the labor or materials furnished to the time of rescission. And the same right of recovery, by lien or otherwise, shall exist where the structure or other improvement is never completed, but through no fault of the claimant, unless it be destroyed by fire or other casualty.

Actual notice of contract must be given.

Failure of notice ground for rescission.

Recovery against uncompleted structures.

Contract Impairing Rights.

Where a writing, separate from the contract but executed the same day, contains a stipulation that no lien shall be filed by a sub-contractor or other person, and such writing is duly filed in the prothonotary's office within ten days of its date, a sub-contractor who begins work in ignorance of the stipulation and between its date and the time of filing cannot file a lien. Section 19 does not apply in such case. Montello Brick Works *v.* Hoot, 14 D. R. 8.

Uncompleted Structure.

No right of recovery exists where the building has been substantially destroyed by a wind storm. Lehr *v.* Schroth, 1 Leh. L. J. 4.

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SECTION 20.

Proceedings in Bankruptcy or Insolvency Against Owner or Contractor.

All proceedings suspended.

Contracts rescinded.

Right to file claim remains.

SEC. 20. Where proceedings in bankruptcy or insolvency are instituted by or against any contractor or owner, they shall operate to suspend all proceedings upon any contract or sub-contract with him for labor to be done or labor or materials to be furnished to the structure or other improvement, and if he be adjudicated a bankrupt or insolvent, or if he should die, then such contractor or sub-contractor may, at his option, refuse to proceed further under his contract; and such contractor or sub-contractor may, upon the happening of any such contingency, by notice to those contracting with him, suspend and end his contracts with such third parties, who shall have a like right, and so on down to the last party connected with the structure or other improvement. When any such contract has been suspended or ended, the right to file a claim or to sue under the contract shall remain; and may be exercised with the same effect as if further proceedings, under such contract, had been determined by consent of all parties.

Insolvent.

A mechanics' lien may be filed against the property of a corporation in the hands of a receiver. Fisher Foundry Co. *v.* Iron Co., 22 Lanc. L. R. 292; 19 York Leg. Rec. 47.

If He Should Die.

If an uncompleted structure be destroyed by wind after the death of the owner but before the contractor has refused to proceed with his contract, by virtue of this section, the right of lien is lost. Lehr *v.* Schroth, 1 Leh. L. J. 4.

The right to file a claim under this section in the event of death, must be exercised within the statutory period or the lien will be lost. Langbein's Est., 15 D. R. 961.

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SECTION 21.

Notice to the Owner of Filing of Claim.

SEC. 21. Within one month after the filing of the claim, the claimant shall serve a notice upon the owner of the fact of the filing of the claim, giving the court, term and number and the date of filing thereof, and shall file of record in said proceedings an affidavit, setting forth the fact and manner of such service. A failure to serve such notice and file an affidavit thereof within the time specified, shall be sufficient ground for striking off the claim.

One month after filing.

Affidavit of service.

Failure of service.

This section is mandatory and failure to comply is fatal to the lien. Crider *v.* McCafferty, 13 D. R. 638; Mock *v.* Roscoe, 14 D. R. 774.

Sub-Contractor.

The word "claimant" includes a sub-contractor who has filed a claim. He must give notice of filing and the claim may be struck off for non-compliance. Compton *v.* Sankey, 13 D. R. 535; 7 Dauphin Co. 215.

Verbal Notice.

Verbal notice will not suffice. Walter *v.* Powell, 13 D. R. 667; Nagle *v.* Saengerbund, 14 D. R. 472; 30 C. C. 669, and I Leh. L. J. 187. Keel *v.* Rhoads, 17 D. R. 139.

Notice must be given under Sec. 21 as well as Sec. 8, but if no objection or exception be made on account of want of notice under Sec. 21, the lack of notice will not be considered on a motion to strike off. Maddock *v.* McGann, 12 D. R. 701.

Contents of Notice.

A notice omitting the number of the term of court at which it was filed and date of filing but otherwise complete is substantial compliance, and the lien will not be stricken off. Emerick *v.* Transfer Co., 17 D. R. 426.

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Affidavit.

An affidavit setting out due giving of notice and properly authenticated by notarial jurat but not signed by the affiant will suffice where the paper shows the affiant's name elsewhere. Burns *v.* Judge, 12 Luz. Leg. Reg. R. 425; 10 North. R. 80.

Failure to Give Notice.

Failure to give notice is not excused by the fact that the owner requested the filing of the lien. Lumber Co. *v.* O'Brien, 16 D. R. 966.

The failure to give notice and file an affidavit thereof is not supplied by the issuance of a Sci. Fa. and obtaining service thereof within the month, the Sci. Fa. is not the notice required by the Act. Walker *v.* Gouron, 16 D. R. 750; 33 C. C. 303.

Service.

Notice of the filing of the claim may be served on the tenant in possession or party occupying the structure. Stoner *v.* Hileman, 12 D. R. 525.

Notice can be served at defendant's office on a clerk in his employ when the defendant and his family are out of the country and his residence is closed. Haas *v.* Hay, 16 D. R. 504.

Section 21 vests discretionary power in the court to strike off the lien for non-compliance with its requirements where it would be inequitable to allow it to remain, but the lien should not be struck off where there is no defence on the merits. Gerrard *v.* Ecker, 12 D. R. 332. This case is disapproved in Nagle *v.* Saengerbund, *supra.*

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SECTION 22.

Use-Claimants.

SEC. 22. Where a claim has been filed which includes unpaid items of labor or materials, furnished by one who contracts with the claimant, whether or not such party is himself entitled to file a claim against the property, such party may, at any time before actual payment or satisfaction of the claim, file of record in said proceedings a petition, under oath or affirmation, setting forth how his interest arises and the extent thereof, and praying that he be substituted as a use-claimant to the extent of said interest, but not exceeding the balance due to the claimant; whereupon the court shall grant a rule upon the claimant, the owner and the contractor to show cause why the relief prayed for should not be allowed. The court shall from the pleadings, aided as to the material disputed facts, if any, by depositions or by a hearing at bar, make such order or decree as the facts shall warrant. If there be a dispute as to the amount to which the petitioner is entitled as against the claimant, that dispute shall be settled upon the distribution of the fund paid on account of said claim, or by a suit at common law, if such suit shall have been brought, or by an issue in said proceedings, and the court may make such orders in relation to the matter as upon equitable principles should be made. After a copy of said petition and rule shall have been served upon the owner or contractor, payments made by him, or a release or discharge given by the claimant, shall not defeat or in any manner affect the rights of the use-claimant; but in other respects, the trial of any issue upon the claim shall be as if between the claimant and defendants only.

Who are.

Right to file petition.

Proceedings.

When use-claimants protected.

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SECTION 23.

Proceedings Where Error is Made in Claim Filed.

Petition.

Stay allowed.

Depositions taken.

Either party may demand jury trial of disputed facts.

Entered on judgment index as lis pendens.

SEC. 23. Any party having a lien against estate in or charge upon the property included in such claim, may file his petition, under oath or affirmation, averring that the date mentioned in the claim as the time when the structure or other improvement was commenced is incorrect, or that the claim is filed against more land than should be justly included therein, or that for any reason the claim is postponed to the rights of the petitioner, and praying an appropriate decree; whereupon the court shall grant a rule upon such claimant to show cause why the relief prayed for should not be allowed, and shall stay proceedings on the claim pending the hearing of the rule, should justice so require. At the instance of others than those personally served with the scire facias, such rule shall be allowed, though judgment be recovered on the claim. The court shall from the pleadings, aided as to the material disputed facts, if any, by depositions or by a hearing at bar, make such order or decree as the facts shall warrant. Like proceedings shall be had if the petition shall aver that the claim is for any reason invalid, has been paid, waived or released, or should not legally or equitably be allowed as a claim against the property; but the material disputed facts in such cases, if any, shall at the request of either party, be tried by a jury without further pleadings. When such request is granted by the court, the fact thereof shall be entered on the judgment index as a lis pendens, with the same effect as if a writ of scire facias had duly issued upon said claim.

The owner can proceed under this section by petition and rule to obtain relief. Este *v.* Penna. R. R. Co., 13 D. R. 451; 30 C. C. 209, affirmed on the ground of sufficiency of the notice. 27 Pa. S. C. R. 521.

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SECTION 24.

Intervention by Third Parties as Defendants and Substitution of Defendants by Claimants.

Any person may intervene as defendant by agreement or leave of Court.

SEC. 24. Any person having an interest in the property described in the claim, whether existing at the time of the claimant's contract or acquired subsequently thereto, may, by agreement of the parties or by leave of the court, intervene as a party defendant and make defence thereto, with the same effect as if he had been originally named as a defendant in the claim filed. And the claimant may, by writing, filed at his costs, strike off the name of any defendant therein, and may substitute as a defendant, and issue a scire facias against, any person who may have acquired an interest as owner after the time of said contract, or who is the personal representative of an owner or contractor who has died, either before or after filing the claim, but such substitution shall always be without prejudice to any intervening rights.

Claimant may substitute other defendants.

Prejudice of intervening rights.

Contractor.

The contractor has no standing to demand that a lien filed by a subcontractor shall be stricken off where the owner makes no objection. Cordes *v.* Ralston, 12 D. R. 438. Right of contractor to raise objection not passed upon by court in Shee *v.* Walker 10 North. 91.

Equities can only be asserted by the one having them and not by another. Pagnacco *v.* Faber, 221 Pa. 326.

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SECTION 25.

Proceedings for Discharge of Liens.

Petition to pay money into Court or give security.

SEC. 25. Any defendant named in the claim, or any person allowed to intervene and defend thereagainst, may present his petition, under oath or affirmation, setting forth that he has a defence in whole or in part thereto, and of what it consists; and praying that a rule be granted upon the claimant to file an affidavit of the amount claimed by him, and to show cause why the petitioner should not have leave to enter security, or pay money into court in lieu of the claim; whereupon a rule shall be granted as prayed for. Upon the pleadings filed, or from the claim and the affidavit of defence, and without a petition where an affidavit of defence has been filed, the court shall determine how much of the claim is admitted or not sufficiently denied; and shall enter a decree that, upon the payment by such petitioner to the claimant of the amount thus found to be due, with interest and costs if anything be found to be due, or upon payment into court, if the claimant refuses to accept the same, and upon entering approved security in at least double the balance claimed and probable costs, or, upon payment into court of a sum sufficient to cover the balance claimed, with interest and costs, that such claim shall be wholly discharged as a lien against the property described therein, and shall be stricken from the judgment index. Thereafter the material disputed facts, if any, shall be tried by a jury, without further pleadings, with the same effect as if a writ of scire facias has duly issued upon said claim to recover the balance thereof; but the jury shall be sworn to try issues between the claimant and the parties signing the bond, or between the claimant and the party who paid

Rule granted.

Court enters decree.

Disputed facts submitted to Jury.

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the fund into court, as the case may be; and verdict, judgment and execution shall follow as in an action commenced at common law.

In a proceeding under this section for the discharge of a mechanics' lien upon entering security, the issue to be tried is made by the lien filed which takes the place of a Sci. Fa., and the petition setting up the defence. The lien having been discharged by the entry of security, no Sci. Fa. can issue thereon. A formal amendment in no way changing the cause of action will not discharge the surety upon such a bond. Vansciver *v.* Churchill, 35 Pa. S. C. R. 212.

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SECTION 26.

Assignment of Claims.

Assigned absolutely or as collateral.

Payment by surety.

Operates as equitable assignment.

Assignee to file claim in name of assignor to use.

SEC. 26. Any claim filed or to be filed under the provisions of this act may be assigned or transferred to a third party, either absolutely or as collateral security; but no such assignment or transfer shall impair or in any manner affect the rights of use-claimants, or give the assignee any other rights than his assignor had. Payment to the claimant of the amount of his claim, or the finishing of the contract by one who is a guarantor or surety of or for the claimant, unless such guaranty or suretyship inures to the benefit of the owner, shall operate as an equitable assignment of the claim, with a paramount equity in his favor as against any other assignee, but a secondary right as against any defendant or use-claimant. In either case, if the claim be not already filed, the assignee may file it in the name of the assignor to his use. If it be already filed it shall be marked to the use of the assignee.

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SECTION 27.

Removal or Detachment of Structures.

SEC. 27. No structure or other improvement bound by or liable for any such claim shall be removed or detached from the premises on which it is bound, pending the determination of the validity of such claim and its payment if adjudged to be valid, unless by virtue of a title obtained by judicial sale, or by one owning the land and not named as a defendant, or acquiring title through a defendant; and the court, upon proof of an attempt or intention to remove or detach the same by or for a party defendant, or by one succeeding to the title of such defendant, shall upon entering approved security enjoin such removal or detaching, until and unless approved security be first entered to protect the claimant in the amount of his recovery. If the structure or other improvement be in fact removed, it shall still be liable for the claims filed, except in the hands of a purchaser for value, after removal and without notice; as shall the land also, if it was bound while the structure or other improvement was on it.

No structures to be removed.

Court to enjoin removal.

After removal, still liable for claim.

Bona fide holder without notice.

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SECTION 28.

Suits and Attachments for Labor and Materials.

Suit begun by summons upon affidavit filed.

Attachment upon third parties.

Quashing of summons.

Entry of security.

SEC. 28. In any suit brought to recover for labor done, or labor or materials furnished, to a structure or other improvement, whether the contract shall have been recorded or not, the plaintiff, if he files of record at the time of beginning the suit an affidavit setting forth the facts, may summons also therein the owner or any other party indebted to the defendant for labor done, or labor or materials, furnished to such structure or other improvement; the effect of service of which writ, upon such third party, shall be to attach the moneys then or thereafter becoming due such defendant. If the defendant, at any time before verdict or judgment, shall file an affidavit that he does not owe plaintiff anything by reason of labor done, or labor or materials furnished, to such structure or other improvement, the summons against the garnishee shall be quashed by the court, upon motion, unless within fifteen days after notice and service of a copy of such affidavit the plaintiff enter approved security, in double the amount of his claim, conditioned that he will prosecute his suit with effect, or will pay all costs, damages and reasonable fees paid or suffered by the defendant, in case of his failure so to do.

This section is unconstitutional. It violates Art. III, Sec. 7 of the Constitution which prohibits "special legislation providing or changing methods for the collection of debts." Tennessee Producers' Marble Co. *v.* Grant, 14 D. R. 453; Vulcanite Portland Cement Co. *v.* Allison, 220 Pa. 382. The decision of Auten, J., in Rogers *v.* Lisowski, 16 D. R. 372 can no longer be regarded as authority. A suit under this section is a "legal proceeding" under the meaning of the Bankruptcy Act of 1898, and the lien will fall if bankruptcy proceedings are begun within four months after suit is brought under this section. Fairlamb *v.* Smedley, 36 Pa. S. C. R. 17.

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SECTION 29.

Form of Writ of Summons.

SEC. 29. Such writ of summons shall be in the following form:

The Commonwealth of Pennsylvania,

To the Sheriff of the County of ————, Greeting:

Whereas, by affidavit filed of record in the Court of Common Pleas of said ———— county, as of ———— Term, 1————, No. ————, it is averred by ————, plaintiff herein, that ————, defendant herein, is indebted to him for labor done or labor or materials furnished to the structure or other improvement therein set forth, and that ————, garnishee herein, is indebted to said defendant for labor done or labor or materials furnished to the same structure or other improvement, and which indebtedness ought to be paid by the garnishee to the plaintiff and not to the defendant:

Now, therefore, we command you that you notify the said defendant and the said garnishee, by service of a copy of this writ, that they are required to enter an appearance in the office of the prothonotary of said court, on or before the ——— day of ————, Anno Domini ————, to answer the claims of said plaintiff, and to abide by and obey the judgment of said court. And have you then and there this writ.

Witness the Honorable ——— ———, President Judge of said court, this ——— day of ————, Anno Domini ————.

————, Prothonotary.

This section falls with Section 28, which was held unconstitutional in Vulcanite Cement Co. *v.* Allison, 220 Pa. 382.

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SECTION 30.

Alias and Pluries Writs of Summons.

Service.

Procedure.

SEC. 30. Alias and pluries writs may be issued if the preceding writs shall not have been served, and if the defendant be not found in the county the sheriff thereof may depute the sheriff of any other county in the Commonwealth to make service thereof upon such defendant. The procedure in such cases, if the defendant be served, shall be as in cases of summons and attachment execution, and, if he be not served, shall be as in cases of foreign attachment; but no such writ shall issue, nor shall any proceedings thereon be valid, unless it appears of record by the affidavit filed that the suit is brought against the defendant to recover for labor done, or labor or materials furnished, to a structure or other improvement therein named; and it shall be a complete defence to said suit that nothing is due the plaintiff upon that account.

This section is made null by the decision in Vulcanite Cement Co. *v.* Allison 220 Pa. 382, which holds that the 28th section violates Art III, Sec. 7 of the Constitution.

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SECTION 31.

Proceedings to Compel Issuance of Scire Facias.

SEC. 31. Any party named as a defendant in the claim filed, or admitted to defend thereagainst, may file as of course and serve a notice upon the claimant, and the use-claimant if any, to issue a scire facias thereon within fifteen days after notice so to do. If no scire facias be issued within fifteen days after the affidavit of service of notice is filed of record, the claim shall be stricken off by the court, upon motion. If a scire facias be issued in accordance with such notice the claimant shall not be permitted to discontinue the same, or suffer a non-suit upon the trial thereof; but a compulsory non-suit shall be entered by the court if the plaintiff does not appear, or withdraws, or for any reason fails to maintain his claim.

Notice to issue scire facias.

Claim may be stricken off.

Discontinuance and non-suit.

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SECTION 32.

Form of Scire Facias.

Form of scire facias.

SEC. 32. The proceedings to recover the amount of any claim, as aforesaid, shall be by writ of scire facias in the following form, viz.:

——— County, ss.:

The Commonwealth of Pennsylvania,

To the Sheriff of said County, Greeting:

Whereas, ——— hath filed a claim in our Court of Common Pleas ——— for the County of ———, against ———, for the sum of ——— for (work done or materials furnished, or both, as the case may be), to (or on) a certain structure, to-wit: (describing it as in the claim).

And whereas, It is alleged that said sum still remains due and unpaid to the said ———, now we command you that you make known to the said ——— that ——— be and appear before the Judges of our said Court, at a Court of Common Pleas to be held at ——— on the first Monday of ——— next, to show if anything ——— know or have to say why the said sum of ——— should not be levied of the said structure to the use of the said ——— according to the form, decree and effect of the act of Assembly in such case made and provided, if to them it shall seem expedient; and have you then and there this writ.

Witness the Honorable ——— ———, President of our said Court, at ——— the ——— day of ———, Anno Domini 1———.

The practice as to Sci. Fa. has been changed by the Act of April 17, 1905, P. L. 172, providing for the use of the above form. The change is material and the court will not sustain a judgment entered on a Sci. Fa. issued in the form provided by § 32 of the Act of 1901, where the lien has been filed since the amendatory Act of 1905. Addis *v.* Lehr, 2 Leh. L. J. 105.

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SECTION 33.

Service of Scire Facias.

SEC. 33. The defendants or their counsel may accept service of said writ of scire facias, but if service be not accepted the writ shall be served by the sheriff as in the case of a summons. If the service has not been or cannot be fully made in the county in which the writ is issued, then alias or pluries writs may issue in like form, or the sheriff may depute the sheriff of any other county in the Commonwealth to make such service, should the defendants or any of them be found therein. If service cannot be made upon the defendants or any of them, in any of the ways above set forth, then service may be had by serving the person or persons in possession of the property described in the claim, if any, with a like copy thereof, or by posting a brief notice of the contents of said writ upon the most public part of said property, if no one be found in possession thereof, and by advertising a like brief notice, once a week for four successive weeks, in one newspaper of general circulation in the county, and in the legal periodical, if any, designated by the court for that purpose. Said notice shall always state that judgment may be entered and the property sold, if an affidavit of defence be not filed within fifteen days after a date named, which shall be the date fixed for the last advertisement. Service of any such writ may be made at any time within three months from the date on which it was issued, but it shall be served and returned at the earliest time possible, and the plaintiff may require its return at any time, whether or not it be actually served.

Service accepted.

Service in other counties.

Other manner of service.

Advertisement.

Notice.

Time of service.

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SECTION 34.

Entry of Judgment and Assessment of Damages.

Judgment for want of affidavit of defence.

No judgment against owner if contractor files affidavit.

Rule for want of sufficient affidavit.

Rule on plaintiff to file replication.

SEC. 34. If no affidavit of defence be filed within the time designated, judgment may be entered and damages assessed by the prothonotary by default, for want thereof. If no affidavit of defence be filed by the contractor, judgment may be entered against him for want thereof, and the damages assessed, though an affidavit of defence be filed by the owner; but no judgment for want thereof shall be entered against the owner, if an affidavit of defence be filed by the contractor. If an affidavit of defence be filed, a rule may be taken for judgment for want of a sufficient affidavit of defence, or for so much of the claim as is insufficiently denied, with leave to proceed for the residue. The defendant may, by rule, require the plaintiff to reply, under oath or affirmation, to the statements set forth in the affidavit of defence, and, after the replication has been filed may move for judgment on the whole record.

Contractor.

Judgment may be entered against a contractor for want of an affidavit even though the owner file one. Such judgment will not be opened on the petition of a trustee in bankruptcy of the contractor on the allegation that the effect of the judgment would be to give the sub-contractor a preference over other creditors. Felin *v.* Conway, 32 Pa. S. C. R. 171.

Issue—Plea.

The issue is made by the writ, affidavit of defence and replication and the court is not guilty of error in refusing to order the filing of a plea. Wyss. Thalman *v.* Beaver Valley Brewing Co., 216 Pa. 435.

Affidavit of Defence.

The court cannot go outside of the affidavit of defence in order to enter judgment for want of a sufficient affidavit. Scott v. Morgan, 217 Pa. 367.

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SECTION 35.

Effect of Judgment Against Contractor.

SEC. 35. If service be accepted for the contractor, or if he shall have been personally served with the original scire facias or any scire facias to revive, or if it be left for him with an adult member of his family or the family with whom he resides, or if he appears to or takes any action in the case, and judgment be entered against him, it shall have all the effect of a personal judgment in a suit at common law; and executions may, from time to time, be issued against him thereupon, or the same may be revived, transferred to other counties, or suits brought thereupon in other jurisdiction, with like effect, though the owner successfully defends against the claim, or proceedings be still pending thereon. If the owner pays any judgment finally recovered on the claim, the claimant shall, upon payment of costs, mark the personal judgment or judgments against the contractor to the use of the owner, and shall transfer to the latter any note or other collateral security he may have for his claim; but the court may, upon petition of the contractor, open the judgment or cause the return of the securities, if there are any equities as between such owner and contractor which shall require such action, and thereafter try the issues raised in such proceedings as in other cases.

Effect of personal judgment.

Owner paying claim may have judgment marked to his use.

Opening judgment.

The judgment is a personal one as to the contractor. Felin *v.* Conway, 32 Pa. S. C. R. 171.

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SECTION 36.

Nature and Kind of Defences by Contractor.

SEC. 36. In addition to the defences growing out of the insufficiency of the claim itself, or of the proof of the facts necessary to sustain it as a claim against the structure or other improvement, any defence which would defeat the action were it a personal one against the contractor to recover for the particular work or materials required to be done or furnished under the contract of the owner, or which shows that the claim was intentionally filed for a grossly excessive amount, shall wholly defeat the claim; and proof that the work in certain particulars was not in accordance with that contract shall defeat it pro tanto. Minor defects, or a failure to complete in minor particulars, shall operate as a defence only to the extent necessary to repair or complete the work. For the purpose of enabling a proper defence to be made, the court may order a more specific statement of the claim, or an examination of the books and papers referred to therein, and may strike off the claim for a failure to comply with the order, as in other cases.

Defences defeating a personal action.

Defences pro tanto.

More specific statement.

Defences.

The contractor or his trustee in bankruptcy may set up by way of defence that the claim is not a lien and may avail themselves of the defence either by affidavit of defence or motion to strike the lien from the record. East End Mantle &c. Co. *v.* Greensburg Plumbing Co., 16 D. R. 779.

Excessive Amount.

A lien filed for an excessive amount will not be stricken off unless there is an evident intention to oppress. Morrison *v.* Bank, 9 Dela. Co. 573.

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SECTION 37.

Effect of Judgment Against Owner.

Compulsory non-suit.

SEC. 37. A compulsory non-suit, unless reversed or set aside, shall operate to bar all further proceedings on the claim. If judgment be finally recovered in favor of the claimant, it shall not have the effect of a personal judgment against the owner if he be not also the contractor, except for the costs of the proceeding. To recover the costs adjudged to the successful party, he may issue execution, as in personal actions.

Judgment not personal except for costs.

Recovery of costs.

A compulsory non-suit does not bar subsequent action upon the debt. Sash Co. *v.* Thompson, 17 D. R. 996.

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SECTION 38.

Proceedings to Alone Sell Structures.

SEC. 38. Any claimant for an entirely new erection and construction of a structure or other improvement, having recovered judgment upon his claim, may, except where the property named is essential to the business of a quasi-public corporation, file a petition in the court in which such claim is filed, setting forth that the party contracting for the structure or other improvement was not capable of binding the land, has forfeited or otherwise lost all interest therein, that the prior estates, charges and encumbrances exceed the value of the land, or that, by reason of any other facts in said petition averred, it is advantageous to the lien-claimants that the structure or other improvements should alone be sold for the benefit of the claimants; whereupon a rule shall be granted upon all parties interested, having filed or being entitled to file claims upon the defendants therein, and upon every person having an interest in the property, including the then owner and any ground rent owner, mortgagee, lien-claimant or encumbrancer, to show cause why the prayer of the petition should not be granted. From the pleadings, aided as to the material disputed facts, if any, by depositions or a hearing at bar, the court shall determine the questions raised; and if it is decided that it would be advantageous to the claimants to have the structure or other improvement alone sold, then the court shall enter a decree, upon equitable terms, that the land upon which the structure or other improvement stands shall be exonerated from the lien of the claims, and the structure or other improvement shall alone be sold to pay the claims, unless the owner shall, within a time fixed, pay all claims

Petition.

Rule on all parties.

Question determined by pleadings, depositions, etc.

Land exonerated and structure sold.

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that have ripened into final judgment, and give approved security to pay all subsequent judgments recovered thereon, the lien of such claims to remain in the meantime; or, unless within such time he shall, by writing filed, agree to pay into court for the benefit of the claimants, and of himself in case of a surplus, the appraised value of the structure or other improvements, as determined by a majority of three appraisers, selected by the parties or appointed by the court. If the structure or other improvement is alone sold, only those who labored thereupon or furnished labor or materials thereto, shall be entitled to come in on the fund realized at the sale, and the purchaser thereat shall have sixty days within which to remove the same from the land which was exonerated from the claim.

Owner may pay claims or enter security.

Appraisers appointed.

Fund goes only for labor or materials furnished.

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SECTION 39.

Sequestration of Rents, Profits, Etc.

SEC. 39. After the expiration of twenty days from the recovery of judgment upon any claim, except in cases where the property named is essential to the business of a quasi-public corporation, the court shall, upon the petition of such judgment creditor, appoint a sequestrator of the rents, issues and profits of the property bound by the judgment, unless in the meantime an appeal be taken and approved security given to operate as a supersedeas. If the owner against whom the judgment is entered be in possession of the property sequestered, the court shall, upon petition filed and served, grant a rule, and, if it be made absolute, award a writ in the nature of a writ of habere facias possessionem, directed to the owner, commanding him to deliver such possession to the sequestrator within fifteen days thereafter, unless such property be occupied by the owner and his family for a home, in which case he shall be entitled to retain possession for a period of three months from the time the petition was served upon him.

Court appoints sequestrator.

Owner in possession.

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SECTION 40.

Revival of Claim by Writ of Scire Facias.

SEC. 40. The judgment upon said claim may be revived by writ of scire facias in the following form: The Commonwealth of Pennsylvania, to C. D. and E. F., Greeting: Writ of sci. fa. to revive.

Whereas, A. B., claimant, on the ——— day of ———, A. D. 1———, recovered judgment in the sum of ——— dollars against you that the following described property be sold to satisfy the same: (Here describe property in full.)

And whereas, We have been given to understand that though judgment as aforesaid was rendered, yet the amount thereof is still due and unpaid, and remains as a lien against said property: Now, you are hereby notified to file your affidavit of defence to A. B.'s claim upon said judgment, if any defence you have, in the office of the prothonotary of our said court, within fifteen days after the service of this writ upon you. If no affidavit of defence be filed within that time, said judgment may be revived against you for the amount set forth, with interest from the time of its recovery, and said property be sold to recover the whole thereof.

Witness the Honorable ———, President Judge of our said court, this ——— day of ———, Anno Domini 1———.

(Seal) ———, Prothonotary.

But the parties to the judgment may agree upon an amicable scire facias to revive, or to an amicable judgment of revival, upon such terms as may be agreed upon, with the same effect as if a scire facias in Amicable sci. fa.

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the form aforesaid had been duly issued, served and returned. If a terre-tenant, whose deed has been duly recorded, is not suggested as a defendant and made a party to the scire facias to revive, the amicable scire facias to revive, or the amicable judgment of revival, or shall not be made a party and served within the period prescribed for reviving the lien of ordinary judgments, the lien of the claim shall be lost so far as his interest in the property is concerned.

Terre tenant not served.

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SECTION 41.

Service of Scire Facias to Revive.

SEC. 41. The defendants or their counsel may accept service of said writ of scire facias to revive, but if service be not accepted the writ shall be served by the sheriff as in the case of a summons. If the defendants or either of them cannot be served in the county, then alias or pluries writs may issue in like form, or the sheriff may depute the sheriff of any other county in the Commonwealth to make such service, should the defendants or any of them be found therein. If service cannot be made upon the defendants or any of them, in any of the ways above set forth, then service may be had by serving the person or persons in possession of the property described in the claim, if any, with a like copy thereof, and if no one be found in possession thereof, then by posting a brief notice of the contents of said writ on the most public part of said property. Said notice shall state that judgment may be entered and the property sold, if an affidavit of defence be not filed within fifteen days after a date named, which shall be the date of such posting. Service of any such writ may be made at any time within three months from the date on which it was issued, but it shall be served and returned at the earliest time possible, and the plaintiff may at any time require its return, whether or not it be actually served.

Service accepted.

Service in other counties.

Manner of service.

Notice.

Time of service.

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SECTION 42.

Practice and Proceedings to Revive.

Same as original scire facias.

SEC. 42. The practice and procedure following said scire facias to revive, so far as applicable shall be the same as in the case of the original scire facias to collect the claim.

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SECTION 43.

Entry of Records on Judgment Index.

SEC. 43. Every claim filed, scire facias issued, verdict recovered, and judgment entered, in accordance with the provisions of this Act, shall be entered on the judgment index of the court. When a claim is stricken off or satisfied, the name of a defendant stricken out, a scire facias discontinued or quashed, or a verdict or judgment stricken off, set aside by granting a new trial, or otherwise reversed or satisfied, a note thereof shall be made on said judgment index, but not in an appealable matter until the expiration of the time for such appeal.

Must be indexed.

Reversal or satisfaction noted.

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SECTION 44.

Execution by and Form of Levari Facias.

SEC. 44. Execution upon any judgment recovered upon any such claim, except where the property named is essential to the business of a quasi-public corporation, shall be by writ of levari facias in the following form:

Form of levari facias.

THE COMMONWEALTH OF PENNSYLVANIA TO THE SHERIFF OF ———— COUNTY, GREETING:

Whereas, A. B., claimant, on the ——— day of ———, Anno Domini 1——, recovered judgment in the sum of ——— dollars, with interest from the —— day of ———, Anno Domini 1——, and costs amounting to ——— dollars, in our Court of Common Pleas of said county, of ———— Term, 1———, Number ———, M. L. D., against C. D. and E. F., that the following described property in your bailiwick be sold to satisfy the same, viz.:

(Here describe property in full.)

Now, this is to command you that you expose the said property to sale by public vendue and outcry, after due advertisement according to law, and that return of said sale, with the moneys realized thereby and this writ, you make to our said court on the ——— day of ————, Anno Domini 1——.

Witness the Honorable ————, President Judge of our said court, this ——— day of ————, Anno Domini ———.

(Seal.) ————, Prothonotary.

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SECTION 45.

Title Acquired by Purchaser at Sheriff's Sale.

SEC. 45. The title acquired at the sheriff's sale under such writ shall be the title which was bound by the lien, as hereinbefore set forth; but no mortgage, ground rent, or other charge upon or estate in the land, shall be affected by such sale, unless upon the record existing at the time of sale some lien upon the property, prior in date, is also discharged thereby. Where the structure or other improvement, the subject of the lien, shall be situate in more than one county, the whole thereof shall be sold under a writ of levari facias in the county where the principal part thereof shall be; but notice of such sale shall be given in every county where any part thereof is situate, to the same extent as if the whole thereof were in that county, and the sheriff's deed shall be acknowledged and recorded in every such county.

Title bound by lien.

Structures situate in several counties.

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SECTION 46.

Execution against Quasi-Public Corporations.

Execution as against other corporations.

Distribution.

Apportionment of funds realized.

SEC. 46. Where judgment is recovered upon any claim, the property named in which is essential to the business of a quasi-public corporation, the claimant shall have execution thereupon as in other cases of judgments against such corporations. Upon the distribution of any fund realized by a sale of the franchises and the whole or any part of the assets of the corporation, the court shall determine the relative value of the whole improvement to the property, to recover from part or all of which the claim was filed, and the claim shall be preferred with other such claims, to the extent that the value thus determined bears to the whole value of the franchises and assets sold.

The method provided by this section to enforce a judgment on a lien is not a proceeding in rem, but in personam and inoperative. It is special legislation. The method of enforcing the lien being inoperative the lien falls. Vulcanite Co. *v.* Rapid Transit Co., 220 Pa. 603.

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SECTION 47.

Sale of Leasehold Estate at Judicial Sale.

SEC. 47. If a leasehold estate or other tenancy, bound by or liable for any such claim, be sold at judicial sale, whether under proceedings on the claim or otherwise, the purchaser shall, unless the lease provides otherwise, have the option of affirming the lease or tenancy, and continuing as a tenant under all the terms and conditions of such letting, or of removing the property subject to such claim, unless the owner, upon notice so to do, shall elect to purchase the estate and property so bought, at a value to be determined by the majority of three appraisers, selected by the parties or appointed by the court.

Purchaser may affirm lease.

May remove property.

Owner may elect to purchase estate.

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SECTION 48.

Stay of Proceedings.

Security to be entered. Stay one year.

Admission of claim.

Expiration of stay.

Owners' rights upon payment.

SEC. 48. At any time before the property is sold, approved security may be entered for a stay of proceedings until the expiration of one year after the date of filing the claim. The entry of such security by the owner, before the entry of judgment on the claim, shall be equivalent to an admission by him that the property is liable for the claim. The entry of such security by the contractor, before the entry of judgment on the claim, shall be equivalent to an admission by him that he has no defence to the recovery of judgment against himself, but shall not debar the owner from defending the claim. After the stay has expired, the claimant may proceed upon the claim and the bond given, separately or simultaneously. If payment is made by the owner, the bond given by the contractor shall be assigned to the use of the owner, and he may recover thereupon the amount paid, or any part thereof, if the accounts as between himself and the contractor shall justify such recovery.

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SECTION 49.

Rights of Claimant in Case of Fire.

SEC. 49. In case the structure or other improvement bound by or liable for any such claims, or which would be so liable but for a waiver thereof, shall be destroyed or removed by fire or other casualty prior to the payment of the claims, any insurance placed upon the property by the owner, contractor or sub-contractor because of such improvement, and actually received or to be received by him because of its destruction or removal, shall, after the insured has received all premiums paid and any money actually expended by him on account of such improvement, inure to the benefit of claimants and use-claimants under him, with the same effect as if they were parties to the contract of insurance; and any party in interest may, by petition filed in his case, or by bill in equity if no claim be actually filed, compel the application of such surplus of insurance money, in the same way and manner, to the same parties and in the same proportions, as if the fund were realized by a judicial sale of the property and there was no waiver of liens. If any insurance placed upon the property because of such improvement shall inure also to the benefit of a mortgagee, ground rent owner, or other person having an estate in, charge upon or encumbrance against such land and improvement, the said claimants or use-claimants, after such person shall have been paid in full, shall be subrogated to his rights against the owner and property, to the extent of the difference between the money recovered by and that paid out by such owner, but not exceeding the amount of insurance actually paid.

When claimant entitled.

Petition by any party in interest.

Subrogation of claimant.

Proportion of distributions.

A bill filed jointly against the owners of and contractor for the

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houses destroyed by fire, and against the insurance companies having policies thereon is not multifarious as to the insurance companies, because it seeks to impound the proceeds of the policies for the benefit of lien creditors. Valley Lumber Co. *v.* Orr, 15 D. R. 385.

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SECTION 50.

Requirements as to Security.

SEC. 50. Wherever security is required to be given in accordance with the provisions of this Act, it may be approved by the prothonotary, subject to an appeal to the court as in other cases. If thereafter the security be found to be insufficient, new security may be required within a given time; in default of the entry of which the cause may proceed with the same effect as if none had been given, the sureties however remaining liable. By agreement of the parties, or upon approval by the court, after notice, new security may be entered in lieu of that originally taken and an exoneratur entered on the first bond, or the security given may be limited to a particular property, if clear of encumbance, and if the security be entered as a lien upon said property.

Approval of security.

New security.

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SECTION 51.

Right of Amendments of Record Papers.

Manner of amendment.

Not allowed after time for filing expires.

Notice.

Extension of time of filing.

SEC. 51. Any claim, petition, answer, replication, scire facias, affidavit of defence, or other paper filed of record, may be amended from time to time by agreement of the parties, or by leave of the court, upon petition for that purpose, under oath or affirmation, setting forth the amendment desired, that the averments therein contained are true in fact, and that by mistake they were omitted from or wrongfully stated in the particulars as to which the amendment is desired. Such amendment shall be of right, saving intervening rights; except that no amendment of the claim shall be allowed, after the time for its filing has expired, which undertakes to substitute an entirely different property from that originally described in the claim, or a wholly different party as the defendant with whom the claimant contracted; but the description of the property or the name of such defendant may be amended so as to be made more accurate, as in other cases of amendment. If the names of the owner and contractor be correctly stated and the description of the property be reasonably accurate, the claim shall be sufficient notice to the owner, purchasers and lien creditors, though it may have to be amended in other particulars. The court may, for cause shown and filed of record, enlarge the time for requiring the filing of the claim, affidavit of defence, answer or replication, for issuing a scire facias, or for entering security, by rule or special or standing order; and any judgment by default may be opened by the court, upon cause shown; but no enlargement of the time for requiring the filing of the claim or for issuing a scire facias shall extend the same beyond the time herein provided for preserving or retaining the lien thereof.

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Amendments to liens are of right saving intervening rights and can be made *at any time* during existence of lien except when otherwise provided by the law. Thirsk *v.* Evans, 211 Pa. 239.

Formal.

Right to amend will be liberally allowed where the amendment is formal or where the lien filed contains a statement sufficient to form the basis of an amendment. Sinnott *v.* Beard, 14 D. R. 619; 21 Montg. L. R. 93; 10 North. 16; Beam *v.* Geiselman, 16 D. R. 579; 22 Montg. L. R. 106; James v. Homoyer, 21 Montg. L. R. 88.

Different Property.

Amendments are allowable after the time for filing has expired except where they undertake to substitute a different property from that originally described in the claim or a different party as the defendant with whom the claimant contracted. Hoover *v.* Lebo, 14 D. R. 238; 30 C. C. 582.

Different Party.

One may not amend by substituting a different party as the one with whom he contracted, but may amend as to parties with whom he did not deal directly. Sand Co. *v.* P. C. & W. Ry,. 17 D. R. 377.

After six months from the filing of a lien, the court cannot allow an amendment striking out the name of the claimant and substituting the name of another person as the real party in interest. Holthouse *v.* Bray, 31 Pa. S. C. R. 200.

Plans and Specifications.

A sub-contractor who has filed with his lien a copy of a contract referring to plans and specifications, can after the statutory period, amend by averring that he has demanded of the owner copies and been refused, and that he is thereby prevented from attaching them to his contract and lien. Thirsk *v.* Evans, 211 Pa. 239.

Notice.

Where notice of intention to file and of the filing of a claim has been given, the lien may be amended by the addition of an averment of the

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giving of notice to the owner even after expiration of time for filing claims, saving intervening rights. Lumber Co. *v.* Turnbach, 30 C. C. 408.

Leave to amend a lien by alleging a request to file it as an excuse for failure to give notice was refused where it did not appear that the request was acted on and that plaintiff stood on his rights. Lord *v.* O'Brien, 33 C. C. 524.

An amended lien can be filed without leave prior to expiration of statutory period, but thereafter should be on petition conforming to § 51. Mulherin *v.* Judge, 9 North. 219.

Notice of the filing of a claim is obligatory under § 21. Where the notice has not been given the court may not under this section as to amendments, allow the notice to be served, where the statutory period has expired. Compton *v.* Sankey, 13 D. R. 535; 7 Dauph. 215.

Kind of Labor, Etc.

Failure to state the kind and character of the labor and materials furnished, whether claimant has collateral security, whether the lien is claimed against the fee or a less estate and from what date it is claimed, are amendable hereunder. Burns *v.* Judge, 10 North. 80.

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SECTION 52.

Return, Service, Filing, Etc., of Pleadings.

SEC. 52. Any rule granted under the provisions of this Act may be made returnable at such time as the court may direct, either therein or by rule of court, or by special or standing order. All petitions, answers and replication shall be under oath or affirmation. Answers must be filed and served within fifteen days after service of the petition, and rules and replications must be filed within fifteen days after service of the last of the answers. Replication must be confined to a reply to new matter set forth in the answers. The facts averred by either party and not denied in the answer or replication of the other, shall be taken as true in all subsequent proceedings in the cause, without the necessity for proof thereof, unless amended as herein set forth. Any fact necessarily found by the court in finally determining a rule, shall also be taken as true in all subsequent proceedings in the cause, without the necessity for proof thereof, unless either party, by writing filed and served at least ten days prior to the time fixed for trial, requires that it be submitted to the jury.

Return of Rules.

Petitions.

Answers.

Replications.

Submission of facts to jury.

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SECTION 53.

Service of Notices, Rules, Petitions.

Manner of service.

SEC. 53. All notices, petitions and rules shall be served upon counsel for the parties interested, or upon the parties themselves, in the manner bills in equity are served, or upon the owner by leaving a copy with the party in possession of the structure or other improvement; or in default of service, then in such manner as the court shall direct.

The notice of the filing of the lien can under this section be served on the tenant in possession. Stoner *v.* Heilman, 12 D. R. 525, but a notice can not be served on a clerk at the owner's place of business in the owner's absence. Lofink *v.* Schuette, 14 D. R. 558.

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SECTION 54.

Entry of Satisfaction by Claimant.

SEC. 54. If the claim shall be paid or otherwise satisfied or discharged at any time after filing, or if a wilfully false claim shall be filed, it shall be the duty of the claimant or his legal representatives, at the request of the owner or of any other person interested, and on the payment of costs if any be due, to enter satisfaction on the record of such claim, which satisfaction shall forever discharge the lien. In such cases, a refusal to satisfy the claim for a period of sixty days after notice so to do, served upon the claimant or his agent or attorney, shall subject such claimant to a suit as for a penalty at the hands of the party aggrieved, in such sum as the jury shall determine to be just, but not exceeding the amount of the claim.

For what entered.

Refusal to satisfy.

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SECTION 55.

Distribution of Proceeds.

SEC. 55. Every distribution under the provisions of this Act shall be made as follows:

Use-claimants. (1) To use-claimants the amounts due to them, but not exceeding in the aggregate the sum distributable to the lien of the sub-contractor through whom they claim.

Sub-contractors. (2) To sub-contractors the amounts due to them, after deducting any sums awarded to use-claimants under them.

Contractors. (3) To contractors the amounts due to them, after deducting any sums awarded to sub-contractors and use-claimants under them.

Owner. (4) To the owner any balance remaining.

Claims abate proportionately. If the amount distributable to any of said classes shall be insufficient to pay in full, the claims in that class shall abate proportionately.

This section provides for the order of distribution but does not affect the law as to the right of others than the owner to challenge the validity of a lien filed. Upon a distribution the court can inquire not only as to the priority of liens as between the various claimants to the fund, but can determine the validity of claims filed and if the determination is adverse to the claim, distribution can be made accordingly. Prudential Trust Co. *v.* Hildebrand, 34 Pa. S. C. R. 249.

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SECTION 56.

Priority of Distribution of Funds in Legal Proceedings.

SEC. 56. In every distribution hereafter made under legal proceedings in any court, if any portion of the funds for distribution shall have been realized because of labor or materials furnished to any structure or other improvement by the party whose estate is to be distributed, any distributee claiming for labor done or labor or materials furnished to such structure or other improvement shall be entitled to priority against the portion of the fund thus realized.

Priority in fund for labor and materials furnished.

On the distribution of a fund arising from the sale of a decedent's real estate for the payment of debts, sub-contractors who have filed claims within the statutory time are entitled to priority even though their liens have not been reduced to judgment. The death of the owner does not extend the time for filing a claim and those sub-contractors who do not file within the statutory period are not entitled to priority. Langbein's Estate, 15 D. R. 961.

The Orphans' Court has no power to give validity to a lien by amendment of the claim and in distribution of a fund raised by an Orphans' Court sale for payment of debts a mechanics' lien will not be given priority over a mortgage by evidence outside of the claim, that the last work was done within six months from the filing of claim. Deichley's Est. 35 Pa. S. C. R. 442.

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SECTION 57.

Receipt as Condition Precedent to Payment.

Parties entitled to demand receipt.

SEC. 57. As a condition precedent to payment for labor done or labor or materials furnished to a structure or other improvement, the party making the same shall be entitled to demand, from the person entitled thereto a receipt stating the amount thereof and for what it is given.

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SECTION 58.

Purpose of Act as to Rights and Liabilities.

SEC. 58. Nothing herein contained shall alter or in any manner affect the other rights and liabilities of those entitled to file claims under the provisions of this Act; it being intended hereby only to furnish and regulate the remedies herein set forth, and to provide means for the enforcement of such remedies; but a judgment on the merits, in favor of or against the contractor, shall have the effect of debarring any further proceedings against him personally.

Rights other than those mentioned in Act.

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SECTION 59.

Appeals to Supreme and Superior Courts.

When appeal allowed.

SEC. 59. From any definite judgment, order or decree, entered by the Court of Common Pleas under any of the provisions of this Act, or from the refusal to open a judgment entered by default, an appeal may be taken by the party aggrieved to the Supreme Court or Superior Court, as in other cases.

The word "definite" preceding the words "judgment, order or decree" is to be taken as "definitive" as opposed to interlocutory. Kurrie *v.* Cottingham, 209 Pa. 12. No appeal lies from an order discharging a rule to strike off a mechanics' lien. Breitweiser *v.* Scott, 33 Pa. S. C. R. 627.

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SECTION 60.

Application of the Act.

SEC. 60. This Act shall apply only to claims wherein the work was commenced to be performed or materials were commenced to be furnished after the date of its approval, but the rights of claimants under existing laws shall remain unaffected by its passage.

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SECTION 61.

Repeals.

Repeals.

SEC. 61. The following Acts of Assembly and parts of Acts, viz.:

Act of March 17, 1806.

"An Act securing to mechanics and others payment for their labor and materials, in erecting any house or other building within the city and county of Philadelphia," approved March seventeenth, one thousand eight hundred and six. (4 Sm. Laws, 300.)

Act of March 28, 1808.

"A supplement to an Act, entitled 'An Act securing to mechanics and others payment for their labor and materials, in erecting any house or other building within the city and county of Philadelphia,'" approved March twenty-eighth, one thousand eight hundred and eight. (4 Sm. Laws, 528.)

Act of January 21, 1813.

"An Act extending an Act, entitled 'An Act securing to mechanics and others payment for their labor and materials, in erecting any house or other building within the city and county of Philadelphia,' to the borough of Beaver, in the county of Beaver," approved January twenty-first, one thousand eight hundred and thirteen. (6 Sm. Laws, 12.)

Act of March 1, 1815.

"An Act extending an Act, entitled 'An Act securing to mechanics and others payment for their labor and materials, in erecting any house or other building within the city and county of Philadelphia,' to the borough of Marietta, in the county of Lancaster, and the borough of Harrisburg, in the county of Dauphin," approved March first, one thousand eight hundred and fifteen. (6 Sm. Laws, 250.)

Act of March 22, 1817.

"An Act extending the benefits of an Act, entitled 'An Act securing to mechanics and others payment for their labor and materials, in erecting any house or other building within the city and county of

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Philadelphia,' to the mechanics and others of the borough of Reading, of the borough of West Chester, and of the towns and villages adjacent to the city of Pittsburgh, and to the counties of Lancaster, Montgomery, York, Dauphin, Franklin, and Lebanon," approved March twenty-second, one thousand eight hundred and seventeen. (6 Sm. Laws, 445.)

Act of March 24, 1818.

"An Act extending the benefits of an Act, entitled 'An Act securing to mechanics and others payment for their labor and materials, in erecting any house or other building within the city and county of Philadelphia,' to the mechanics and others of the counties of Cumberland, Northumberland, Columbia, and Beaver, and for other purposes," approved March twenty-fourth, one thousand eight hundred and eighteen. (7 Sm. Laws, 119.)

Act of March 7, 1821.

"An Act extending an Act, entitled 'An Act securing to mechanics and others payment for their labor and materials, in erecting any house or other building within the city and county of Philadelphia,' to the counties of Delaware, Bucks, Luzerne, and Mifflin," approved March seventh, one thousand eight hundred and twenty-one. (7 Sm. Laws, 383.)

Act of April 11, 1825.

"An Act extending the benefits of an Act, entitled 'An Act securing to mechanics and others payment for their labor and materials in erecting any house or other building in the city and county of Philadelphia,' to the mechanics and others in the counties of Schuylkill, Berks, Erie, Somerset, and Venango, and for other purposes," approved April eleventh, one thousand eight hundred and twenty-five. (Pamphlet Laws, 162.)

Act of April 10, 1826.

"An Act extending the benefits of an Act, entitled 'An Act securing to mechanics and others payment for their labor and materials, in erecting any house or other building in the city and county of Philadelphia,' to the mechanics and others of the counties of Crawford, Lycoming, Centre, Clearfield, and Indi-

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ana," approved April tenth, one thousand eight hundred and twenty-six. (Pamphlet Laws, 345.)

Act of April 16, 1827. Section one of a supplement to an Act, entitled "An Act securing to mechanics and others payment for their labor and materials, in erecting any house or other building within the city and county of Philadelphia, and for other purposes," approved April sixteenth, one thousand eight hundred and twenty-seven. (Pamphlet Laws, 446.)

Act of February 4, 1830. "An Act extending an Act, entitled 'An Act securing to mechanics and others payment for their labor and materials, in erecting any house or other building within the city and county of Philadelphia,' to the borough of Easton, Northampton county," approved February fourth, one thousand eight hundred and thirty. (Pamphlet Laws, 37.)

Act of January 28, 1831. "An Act extending the provisions of the lien laws to the plumbers of the city and county of Philadelphia," approved January twenty-eighth, one thousand eight hundred and thirty-one. (Pamphlet Laws, 36.)

Act of March 30, 1831. "An Act extending an Act, entitled 'An Act securing to mechanics and others payment for their labor and materials, in erecting any house or other building within the city or county of Philadelphia,' to the counties of Bedford, Cambria, Tioga, and Armstrong," approved March thirtieth, one thousand eight hundred and thirty-one. (Pamphlet Laws, 239.)

Act of March 30, 1831. "An Act relative to the liens of mechanics and others," approved March thirtieth, one thousand eight hundred and thirty-one. (Pamphlet Laws, 242.)

Act of May 7, 1832. "An Act extending 'An Act securing to mechanics and others payment for their labor and materials, in erecting any house or other building within the city and county of Philadelphia,' to the counties of Chester, Butler, and Perry," approved May seventh, one thousand eight hundred and thirty-two. (Pamphlet Laws, 539.)

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So much of section two of "An Act to establish the district court for the city and county of Philadelphia," as relates to actions of scire facias on liens of mechanics and materialmen, approved March twenty-eight, one thousand eight hundred and thirty-five. (Pamphlet Laws, 88.)

Part of Section 2 of the act of March 28, 1835.

Section one of "An Act extending the mechanics' lien law to the counties of Warren and Juniata, and for other purposes," approved April eleventh, one thousand eight hundred and thirty-five. (Pamphlet Laws, 190.)

Section 1 of the act of April 11, 1835.

"An Act to extend the laws relating to mechanics' liens to the counties of Washington, Huntingdon, Mercer, Beaver, and Allegheny," approved April thirteenth, one thousand eight hundred and thirty-five. (Pamphlet Laws, 213.)

Act of April 13, 1835.

Section six of "An Act to authorize the opening and extension of Robinson and Leacock streets and Rebecca street, in the borough of Allegheny, and the opening of a sixty feet wide street between out-lots numbered thirty-nine and forty in said borough, and for other purposes," approved April one, one thousand eight hundred and thirty-six. (Pamphlet Laws, 400.)

Section 6 of the act of April 1, 1836.

"An Act relating to the lien of mechanics and others upon buildings," approved June sixteenth, one thousand eight hundred and thirty-six. (Pamphlet Laws, 695.)

Act of June 16, 1836.

Sections nineteen and thirty four of "An Act granting certain powers to the authorities of the cities of Lancaster and Philadelphia, and for other purposes," approved April sixteenth, one thousand eight hundred and thirty-eight. (Pamphlet Laws, 626.)

Sections 19 and 34 of the act of April 16, 1838.

Section eight of "An Act relating to executions, and for other purposes," approved April sixteenth, one thousand eight hundred and forty. (Pamphlet Laws, 410.)

Section 8 of act of April 16, 1840.

Section twenty-four of "An Act to authorize the government to contract with the corporation of the

Section 24 of act of April 28, 1840.

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borough of Harrisburg for supplying the public buildings with water, and for other purposes," approved April twenty-eighth, one thousand eight hundred and forty. (Pamphlet Laws, 467.)

Section 14 of act of March 19, 1841.

Section fourteen of "An Act to incorporate the Lancaster County Mutual Insurance Company, and to extend the Mechanics' Lien Law to the county of Clinton," approved March nineteenth, one thousand eight hundred and forty-one. (Pamphlet Laws, 95.)

Section 22 of act of April 6, 1841.

Section twenty-two of "An Act to incorporate the village of Clarion, in the county of Clarion, into a borough, and for other purposes," approved April sixth, one thousand eight hundred and forty-one. (Pamphlet Laws, 155.)

Act of February 19, 1842.

"An Act supplementary to an Act, entitled 'An Act relating to the lien of mechanics and others upon buildings,' passed the sixteenth day of June, one thousand eight hundred and thirty-six," approved February nineteen, one thousand eight hundred and forty-two. (Pamphlet Laws, 22.)

Section 1 of supplement approved March 12, 1842.

Section one of "A further supplement to the Act, entitled 'An Act to establish the district court of the city and county of Philadelphia,' passed the twenty-eighth day of March, one thousand eight hundred and thirty-five, and for other purposes," approved March twelfth, one thousand eight hundred and forty-two. (Pamphlet Laws, 66.)

Section 30 of act of March 25, 1842.

Section thirty of "An Act to appoint commissioners to resurvey and mark that portion of the county line which divides the township of Bristol, in the county of Philadelphia, from the township of Cheltenham, in the county of Montgomery, and for other purposes," approved March twenty-fifth, one thousand eight hundred and forty-two. (Pamphlet Laws, 192.)

Section 3 of act of March 30, 1842.

Section three of "An Act to legalize certain proceedings in the Court of Common Pleas of Adams county, and for other purposes," approved March thir-

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tieth, one thousand eight hundred and forty-two. (Pamphlet Laws, 213.)

Section twenty-nine of "An Act annexing the county of Schuylkill to the eastern district of the Supreme Court, and for other purposes," approved August two, one thousand eight hundred and forty-two. (Pamphlet Laws, 458.)

Section 29 of act of August 2, 1842.

A further supplement of the Act, entitled "An Act relating to the lien of mechanics and others on buildings," approved April fifth, one thousand eight hundred and forty-three. (Pamphlet Laws, 171.)

Supplement approved April 5, 1843.

"An Act to incorporate the Manayunk Fire Engine Company, of the county of Philadelphia, and for other purposes," approved April twenty-fourth, one thousand eight hundred and forty-three. (Pamphlet Laws, 356.)

Act of April 24, 1843.

A further supplement to "An Act relating to the lien of mechanics and others on buildings," approved March nineteenth, one thousand eight hundred and forty-four. (Pamphlet Laws, 140.)

Supplement approved March 19, 1844.

Section nine of "An Act further to regulate the proceedings in courts of justice, and for other purposes," approved May sixth, one thousand eight hundred and forty-four. (Pamphlet Laws, 564.)

Section 9 of act of May 6, 1844.

Section five of "An Act concerning certain sheriffs' and coroners' sales, and for other purposes," approved April sixteenth, one thousand eight hundred and forty-five. (Pamphlet Laws, 538.)

Section 5 of act of April 16, 1845.

"Supplement to an Act, entitled 'An Act relating to the lien of mechanics and others upon buildings,'" approved March eleventh, one thousand eight hundred and forty-six. (Pamphlet Laws, 113.)

Supplement approved March 11, 1846.

Section one of "A supplement to the Act, entitled 'An Act relating to the lien of mechanics and others upon buildings,' and for other purposes," approved April thirteenth, one thousand eight hundred and forty-six. (Pamphlet Laws, 327.)

Section 1 of act of April 13, 1846.

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Section 5 of act of April 10, 1848.

Section five of "An Act extending the chancery powers of, and to the jurisdiction and proceedings in, certain courts," approved April tenth, one thousand eight hundred and forty-eight. (Pamphlet Laws, 448.)

Section 1 of act of January 23, 1849.

Section one of "An Act relating to the lien of mechanics' and others, and to sales to enforce the payment of lien," passed January twenty-three, one thousand eight hundred and forty-nine. (Pamphlet Laws, 686.)

Supplement approved March 24, 1849.

"A supplement to an Act, entitled 'An Act relating to the lien of mechanics and others upon buildings,' passed the sixteenth day of June, one thousand eight hundred and thirty-six," approved March twenty-fourth, one thousand eight hundred and forty-nine. (Pamphlet Laws, 675.)

Act of April 9, 1849.

"An Act relative to mechanics' liens in the counties of Westmoreland, Columbia, and Elk," approved April ninth, one thousand eight hundred and forty-nine. (Pamphlet Laws, 495.)

Section 38 of act of April 25, 1850.

Section thirty-eight of "An Act relating to the bail of executrixes, to partition in the Orphans' Court and Common Pleas," et cetera, passed April twenty-fifth, one thousand eight hundred and fifty. (Pamphlet Laws, 569.)

Section 9 of act of April 26, 1850.

Section nine of "An Act to incorporate a company to build a plank road from Titusville, in Crawford county, to Warren, in Warren county, and relative to mechanics' liens," et cetera, et cetera, approved April twenty-sixth, one thousand eight hundred and fifty. (Pamphlet Laws, 611.)

Section 38 of act of March 15, 1851.

Section thirty-eight of "An Act to incorporate the city of Carbondale," approved March fifteenth, one thousand eight hundred and fifty-one. (Pamphlet Laws, 163.)

Portion of section 14 of act of April 14, 1851.

So much of section fourteen of "An Act to incorporate the Western Insurance Company, relative to

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the tax on the Lebanon Valley Railroad," et cetera, et cetera, approved April fourteenth, one thousand eight hundred and fifty-one, (Pamphlet Laws, 622), as relates to the liens of mechanics and material men.

Act of April 21, 1854.

An Act relative to mechanics' liens in the county of Schuylkill, approved April twenty-first, one thousand eight hundred and fifty-four. (Pamphlet Laws, 428.)

Supplement approved April 14, 1855.

"A supplement to an Act, entitled 'An Act relating to the lien of mechanics and others upon buildings,' passed the sixteenth day of June, one thousand eight hundred and thirty-six," approved April fourteenth, one thousand eight hundred and fifty-five. (Pamphlet Laws, 238.)

Supplement approved April 21, 1856.

"A further supplement to an 'Act relating to the lien of mechanics and others upon buildings,' passed the sixteenth day of June, one thousand eight hundred and thirty-six," approved April twenty-one, one thousand eight hundred and fifty-six. (Pamphlet Laws, 496.)

Act of February 17, 1858.

"An Act relative to mechanics' liens, in the counties of Luzerne and Schuylkill," approved February seventeenth, one thousand eight hundred and fifty-eight. (Pamphlet Laws, 29.)

Supplement approved May 1, 1861.

"A supplement to an 'Act relating to the lien of mechanics and others upon buildings, approved the sixteenth day of June, one thousand eight hundred and thirty-six, so far as relates to certain counties,'" approved May first, one thousand eight hundred and sixty-one. (Pamphlet Laws, 550.)

Supplement approved April 9, 1862.

"A further supplement to an Act, entitled 'An Act relating to the lien of mechanics and others,' passed the sixteenth day of June, one thousand eight hundred and thirty-six," approved April nine, one thousand eight hundred and sixty-two. (Pamphlet Laws, 402.)

Supplement approved April 22, 1863.

"A supplement to an Act relating to the lien of mechanics and others, upon buildings, approved the

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sixteenth day of June, one thousand eight hundred and thirty-six," approved April twenty-second, one thousand eight hundred and sixty-three. (Pamphlet Laws, 529.)

Supplement approved February 16, 1865.

"A further supplement to an Act relating to the liens of mechanics and others, upon buildings, approved the sixteenth day of June, one thousand eight hundred and thirty-six, so far as relates to certain counties, and supplement thereto, approved May first, one thousand eight hundred and sixty-one, extending the same to Allegheny county," approved February sixteenth, one thousand eight hundred and sixty-five. (Pamphlet Laws, 150.)

Act of March 21, 1865.

"An Act to extend the provisions of an Act, entitled 'An Act relative to mechanics' liens, in the counties of Luzerne and Schuylkill,' approved February seventeenth, one thousand eight hundred and fifty-eight, to the counties of Westmoreland and Allegheny," approved March twenty-first, one thousand eight hundred and sixty-five (incorrectly printed one thousand eight hundred and sixty-four). (Pamphlet Laws, 433.)

Act of March 22, 1865.

"An Act extending the Act, entitled 'A supplement to an Act relating to the lien of mechanics and others upon buildings, approved the sixteenth day of June, one thousand eight hundred and thirty-six, so far as relates to certain counties,' approved the first day of May, one thousand eight hundred and sixty-one, to the county of Lancaster," approved March twenty-second, one thousand eight hundred and sixty-five. (Pamphlet Laws, 580.)

Act of February 28, 1866.

"An Act to extend an Act, entitled 'A supplement to an Act relating to the lien of mechanics and others upon buildings, approved the sixteenth day of June, one thousand eight hundred and thirty-six, so far as relates to certain counties,' to Montgomery county," approved February twenty-eighth, one thousand eight hundred and sixty-six. (Pamphlet Laws, 127.)

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"An Act relative to mechanics' liens in the county of Schuylkill," approved April fourth, one thousand eight hundred and sixty-six. (Pamphlet Laws, 499.) Act of April 4, 1866.

"An Act to extend the provisions of an Act relative to mechanics' liens in the counties of Luzerne and Lawrence, approved seventeenth February, one thousand eight hundred and fifty-eight to the counties of Erie, Crawford, Venango, and Warren," approved April eleventh, one thousand eight hundred and sixty-six. (Pamphlet Laws, 649.) Act of April 11, 1866.

"A supplement to an Act relating to the lien of mechanics and others upon buildings, extending it to York county," approved February fourteenth, one thousand eight hundred and sixty-seven. (Pamphlet Laws, 211.) Supplement approved February 14, 1867.

"An Act to extend the provisions of an Act, entitled 'An Act relative to mechanics' liens in the counties of Luzerne and Schuylkill,' approved February seventeenth, one thousand eight hundred and fifty-eight, to the county of Northumberland," approved March twelfth, one thousand eight hundred and sixty-seven. (Pamphlet Laws, 404.) Act of March 12, 1867.

"A supplement to an Act relating to the lien of mechanics and others upon buildings, extending it to the county of Dauphin," approved April fourth, one thousand eight hundred and sixty-seven. (Pamphlet Laws, 748.) Supplement approved April 4, 1867.

"A supplement to an Act relating to the lien of mechanics and others upon buildings, approved the sixteenth day of June, one thousand eight hundred and thirty-six, to apply to the county of Chester," approved April fourth, one thousand eight hundred and sixty-seven. (Pamphlet Laws, 749.) Supplement approved April 4, 1867.

"A supplement to an Act relating to the lien of mechanics and others upon buildings, approved the sixteenth day of June, one thousand eight hundred and thirty-six, extending it to the counties of Blair Supplement approved April 4, 1867.

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and Armstrong," approved April fourth, one thousand eight hundred and sixty-seven. (Pamphlet Laws, 755.)

Act of April 10, 1867.

"An Act to extend the provisions of an Act relative to the mechanics' liens in the counties of Luzerne and Schuylkill, approved seventeenth of February, one thousand eight hundred and fifty-eight, to the county of Forest," approved April tenth, one thousand eight hundred and sixty-seven. (Pamphlet Laws, 1100.)

Supplement approved February 27, 1868.

"A further supplement to an Act relating to the lien of mechanics and others upon buildings, approved the sixteenth day of June, one thousand eight hundred and thirty-six, extending the same to improvements, machinery, tanks and fixtures about oil or other refineries," approved February twenty-seventh, one thousand eight hundred and sixty-eight. (Pamphlet Laws, 212.)

Supplement approved March 20, 1868.

"A supplement to an Act relating to the lien of mechanics and others upon buildings, extending it to Cumberland and Franklin counties," approved March twentieth, one thousand eight hundred and sixty-eight. (Pamphlet Laws, 407.)

Act of April 4, 1868.

"An Act to extend the provisions of an Act, entitled 'An Act relative to mechanics' liens in the counties of Luzerne and Schuylkill,' approved February seventeenth, one thousand eight hundred and fifty-eight, to the county of Carbon," approved April fourth, one thousand eight hundred and sixty-eight. (Pamphlet Laws, 680.)

Act of April 8, 1868.

"An Act relating to the lien of mechanics, material men and laborers upon leasehold estates and property thereon, in the county of Venango," approved April eighth, one thousand eight hundred and sixty-eight. (Pamphlet Laws, 752.)

Act of April 13, 1868.

"An Act extending the provisions of an Act, entitled 'A supplement to an Act relating to the lien of

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mechanics and others upon buildings, approved the sixteenth day of June, one thousand eight hundred and thirty-six, extending it to the counties of Blair and Armstrong,' approved the fourth day of April, one thousand eight hundred and sixty-seven; to the county of Monroe," approved April thirteenth, one thousand eight hundred and sixty-eight. (Pamphlet Laws, 946.)

Supplement approved August 1, 1868.

"A supplement to an Act relating to the liens of mechanics and others upon buildings so far as refers to the city of Philadelphia, providing for the speedy trial of certain claims," approved August first, one thousand eight hundred and sixty-eight. (Pamphlet Laws, 1168.)

Act of March 12, 1869.

"An Act extending the provisions of an Act, entitled 'A supplement to an Act relating to the lien of mechanics and others upon buildings, approved the sixteenth day of June, Anno Domini one thousand eight hundred and thirty-six, so far as relates to certain counties,' approved the first day of May, Anno Domini one thousand eight hundred and sixty-one, to the counties of Lycoming, Erie, Warren, Venango and Perry," approved March twelfth, one thousand eight hundred and sixty-nine. (Pamphlet Laws, 339.)

Act of March 18, 1869.

"An Act extending the provisions of an Act relating to the liens of mechanics, material men and laborers, upon leasehold estates and property thereon, in the county of Venango, approved April eighth, one thousand eight hundred and sixty-eight, to the counties of Crawford, Warren, and Clarion," approved March eighteenth, one thousand eight hundred and sixty-nine. (Pamphlet Laws, 410.)

Act of April 10, 1869.

"An Act to extend the provisions of a supplement to an Act relating to the lien of mechanics and others upon buildings, extending it to Cumberland and Franklin counties, to the county of Northampton," approved April tenth, one thousand eight hundred and sixty-nine. (Pamphlet Laws, 840.)

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Act of April 13, 1869. "An Act to amend an Act approved April eighth, one thousand eight hundred and sixty-eight, entitled 'An Act relating to the liens of mechanics, material men and laborers, upon leasehold estates and property thereon, in the counties of Venango, Crawford, and Warren,' and declaring the true intent and meaning thereof," approved April thirteenth, one thousand eight hundred and sixty-nine. (Pamphlet Laws, 887.)

Act of February 3, 1870. "An Act extending the mechanics' lien law to pavements and curbstones, in the county of Perry," approved February third, one thousand eight hundred and seventy. (Pamphlet Laws, 105.)

Act of February 12, 1870. "An Act to extend the provisions of an Act, entitled 'A supplement to an Act relating to the lien of mechanics and others upon buildings, so far as relates to certain counties,' approved the first day of May, Anno Domini one thousand eight hundred and sixty-one, to the county of Bucks," approved February twelve, one thousand eight hundred and seventy. (Pamphlet Laws, 142.)

Act of March 1, 1870. "An Act to extend the provisions of the second section of an Act of Assembly, entitled 'An Act relative to mechanics' liens in the counties of Westmoreland, Columbia, and Elk,' to the county of Allegheny," approved March one, one thousand eight hundred and seventy. (Pamphlet Laws, 282.)

Act of March 14, 1870. "An Act to extend the provisions of an Act, entitled 'A supplement to an Act relating to the lien of mechanics and others upon buildings, so far as relates to certain counties," approved the first day of May, Anno Domini one thousand eight hundred and sixty-one, to the counties of Carbon and Monroe," approved March fourteen, one thousand eight hundred and seventy. (Pamphlet Laws, 430.)

Act of March 16, 1870. "An Act to extend the provisions of an Act, entitled 'An Act relating to the liens of mechanics, material men and laborers, upon leasehold estates and

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property thereon, in the county of Venango,' approved the eighth day of April, Anno Domini one thousand eight hundred and sixty-eight; also, the provisions of an Act, entitled 'An Act to amend an Act approved the eighth day of April, one thousand eight hundred and sixty-eight, entitled 'An Act relating to liens of mechanics, material men and laborers, upon leasehold estates and property thereon, in the counties of Venango, Crawford and Warren,' and declare the true intent and meaning thereof,' approved April thirteen, one thousand eight hundred and sixty-nine, to the counties of Armstrong, Clarion, and Butler," approved March sixteen, one thousand eight hundred and seventy. (Pamphlet Laws, 452.)

Act of March 28, 1870.

"An Act to amend an Act approved April eight, one thousand eight hundred and sixty-eight, entitled 'An Act relating to the liens of mechanics, material-men and laborers, upon leasehold estates and property thereon, in the counties of Venango, Crawford, and Warren,' and the supplement thereto, approved April thirteen, one thousand eight hundred and sixty-nine," approved March twenty-eight, one thousand eight hundred and seventy. (Pamphlet Laws, 567.)

Act of April 4, 1870.

"An Act to extend the provisions of an Act, entitled 'A supplement to an Act relating to the lien of mechanics and others upon buildings, so far as relates to certain counties,' approved the first day of May, one thousand eight hundred and sixty-one, to the counties of Lehigh and Union," approved April four, one thousand eight hundred and seventy. (Pamphlet Laws, 857.)

Act of February 20, 1871.

"An Act relating to mechanics' liens in the county of Butler," approved February twenty, one thousand eight hundred and seventy-one. (Pamphlet Laws, 113.)

Act of May 10, 1871.

"An Act to extend the provisions of 'An Act relative to mechanics' liens in the counties of Luzerne

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and Schuylkill,' approved the seventeenth day of February, one thousand eight hundred and fifty-eight, to the counties of Bradford and Sullivan," approved May ten, one thousand eight hundred and seventy-one. (Pamphlet Laws, 668.)

Act of May 10, 1871.

"A supplement to an Act, entitled 'An Act relative to mechanics' liens in the counties of Westmoreland, Columbia, and Elk,' extending the provisions of the second section to the county of Bradford," approved May ten, one thousand eight hundred and seventy-one. (Pamphlet Laws, 675.)

Supplement approved May 13, 1871.

"A further supplement to an Act, entitled 'An Act relating to liens of mechanics and others upon buildings,' approved June sixteen, one thousand eight hundred and thirty-six, so far as the same relates to the counties of Bradford and Sullivan," approved May thirteen, one thousand eight hundred and seventy-one. (Pamphlet Laws, 844.)

Act of May 19, 1871.

"An Act supplementary to an Act relating to mechanics' liens and others, approved the first day of May, one thousand eight hundred and sixty-one, be extended to Lebanon county," approved May nineteen, one thousand eight hundred and seventy-one. (Pamphlet Laws, 952.)

Act of May 19, 1871.

"An Act to extend to Warren county the provisions of an Act, entitled 'An Act to amend an Act approved April eight, one thousand eight hundred and sixty-eight, entitled 'An Act relating to liens of mechanics, materialmen and laborers, upon leasehold estates and property thereon, in the counties of Venango, Crawford and Warren," and the supplement thereto approved April thirteen, one thousand eight hundred and sixty-nine,' approved the twenty-eighth day of March, one thousand eight hundred and seventy," approved May nineteen, one thousand eight hundred and seventy-one. (Pamphlet Laws, 1008.)

Supplement approved May 23, 1871.

"A supplement to an Act, entitled 'An Act relating to liens of mechanics, materialmen and laborers,

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upon leasehold estates and property thereon, in the county of Venango,' approved the eighth day of April, one thousand eight hundred and sixty-eight," approved May twenty-three, one thousand eight hundred and seventy-one. (Pamphlet Laws, 1068.)

Supplement approved May 26, 1871.

"A supplement to an Act, entitled 'An Act to extend the provisions of an Act, entitled 'An Act relating to the liens of mechanics, materialmen and laborers, upon leasehold estates and property thereon, in the county of Venango,' approved the sixteenth day of March, one thousand eight hundred and seventy, numbered 444 of the Acts of Assembly for the year one thousand eight hundred and seventy, be extended to the counties of Armstrong, Clarion, and Butler," approved May twenty-six, one thousand eight hundred and seventy-one. (Pamphlet Laws, 1179.)

Supplement approved May 26, 1871.

"A supplement to an Act relative to mechanics' liens in the counties of Westmoreland, Columbia, and Elk, approved April nine, one thousand eight hundred and forty-nine, extending the provisions of said Act to Northumberland county," approved May twenty-six, one thousand eight hundred and seventy-one. (Pamphlet Laws, 1190.)

Act of May 26, 1871.

"An Act to extend the provisions of an Act, entitled 'A supplement to an Act relating to the lien of mechanics and others upon buildings, so far as relates to certain counties,' approved the first day of May, one thousand eight hundred and sixty-one, to the county of Centre," approved May twenty-six, one thousand eight hundred and seventy-one. (Pamphlet Laws, 1215.)

Supplement approved May 26, 1871.

"A further supplement to an Act relating to the lien of mechanics and others upon buildings, approved the sixteenth day of June, one thousand eight hundred and thirty-six, so far as the same relates to the counties of Lehigh and Northampton," approved May twenty-six, one thousand eight hundred and seventy-one. (Pamphlet Laws, 1241.)

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Supplement approved April 3, 1872.

"A supplement to an Act, entitled 'An Act relating to the lien of mechanics and others upon buildings,' approved the sixteenth day of June, one thousand eight hundred and thirty-six," approved April three, one thousand eight hundred and seventy-two. (Pamphlet Laws, 857.)

Supplement approved March 6, 1873.

"A supplement to an Act, entitled 'A supplement to an Act relating to the lien of mechanics and others, upon buildings, so far as refers to the city of Philadelphia,' providing for a speedy trial of certain claims," approved March six. one thousand eight hundred and seventy-three. (Pamphlet Laws, 215.)

Act of March 7, 1873.

"An Act relating to the liens of mechanics, materialmen and laborers upon leasehold estates and property thereon, in the county of Butler," approved March seventh, one thousand eight hundred and seventy-three. (Pamphlet Laws, 219.)

Act of March 27, 1873.

"An Act to extend an Act, entitled 'An Act relating to the liens of mechanics, materialmen and laborers, upon leasehold estates and property thereon, in the county of Venango,' approved April eighth, one thousand eight hundred and sixty-eight, and the several supplements thereto, to Forest county, and to extend the lien in the provisions of said Act to real estate," approved March twenty-seventh, one thousand eight hundred and seventy-three. (Pamphlet Laws, 437.)

Act of April 1, 1873.

"An Act extending the provisions of the several Acts of Assembly relative to mechanics' liens to leasehold in Allegheny county," approved April first, one thousand eight hundred and seventy-three. (Pamphlet Laws, 473.)

Supplement approved April 1, 1873.

"A supplement to an Act relating to the lien of mechanics and materialmen, and to extend the provisions thereof to Susquehanna and Wayne counties, and to apply to painters in said counties," approved April first, one thousand eight hundred and seventy-three. (Pamphlet Laws, 476.)

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"A supplement to an Act, entitled 'An Act relating to the lien of mechanics and others upon buildings,' approved June sixteenth, one thousand eight hundred and thirty-six, and the several supplements thereto," approved May twenty-one, one thousand eight hundred and seventy-eight. (Pamphlet Laws, 76.) Supplement approved May 21, 1878.

"An Act relating to mechanics' liens, and authorizing the amendments of the same," approved June eleventh, one thousand eight hundred and seventy-nine. (Pamphlet Laws, 122.) Act of June 11, 1879.

"A further supplement to an Act relating to the lien of mechanics and others upon buildings, approved the sixteenth day of June, one thousand eight hundred and thirty-six, and extending its provisions to embrace liens of mechanics and laborers upon leasehold estates and property thereon," approved June twenty-eighth, one thousand eight hundred and seventy-nine. (Pamphlet Laws, 182.) Supplement approved June 28, 1879.

"An Act to regulate the priority of liens as between advance money, mortgages and mechanics' liens," approved June eighth, one thousand eight hundred and eighty-one. (Pamphlet Laws, 56.) Act of June 8, 1881.

"A supplement to an Act relating to the lien of mechanics and others upon buildings," approved May eighteenth, one thousand eight hundred and eighty-seven. (Pamphlet Laws, 118.) Supplement approved May 18, 1887.

"An Act relating to the liens of mechanics, laborers and others upon leasehold estates and properties thereon," approved June seventeenth, one thousand eight hundred and eighty-seven. (Pamphlet Laws, 409.) Act of June 17, 1887.

"An Act relating to the lien of mechanics and others upon buildings," approved June seventeenth, one thousand eight hundred and eighty-seven. (Pamphlet Laws, 413.) Act of June 17, 1887.

"An Act securing the right of sub-contractors to file mechanics' liens, and preventing interference with Act of June 8, 1891.

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this right by contracts," approved June eighth, one thousand eight hundred and ninety-one. (Pamphlet Laws, 225.)

Act of May 16, 1895.

"An Act relating to writs of scire facias upon mechanics' liens, requiring the same to be indexed upon judgment dockets, and requiring terre-tenants to be made parties thereto," approved May sixteenth, one thousand eight hundred and ninety-five. (Pamphlet Laws, 84.)

Act of June 26, 1895.

"An Act to regulate building contracts where such contracts have, as part thereof, either incorporately or separately, made a stipulation that no mechanics' lien shall be filed against the building, whether by the contractor or by any sub-contractor, materialman or other person; requiring that such stipulation shall be in writing, and shall be recorded in the prothonotary's office in the county in which the land lies," approved June twenty-sixth, one thousand eight hundred and ninety-five. (Pamphlet Laws 369.)

Act of June 15, 1897.

"An Act to amend section one of a supplement to an Act, entitled 'An Act relating to the lien of mechanics and others upon buildings,' passed the sixteenth day of June, one thousand eight hundred and thirty-six, which supplement was approved the fourteenth day of April, one thousand eight hundred and fifty-five, and extending the provisions of the same to include gas fixtures, electric light fixtures and wires," approved June fifteenth, one thousand eight hundred and ninety-seven. (Pamphlet Laws, 155.)

Repeal.

And all other Acts and parts of Acts, general, special or local, appertaining to the subject-matter covered by this Act, be and the same are hereby repealed; it being intended that this Act shall furnish a complete and exclusive system in itself, so far as relates to liens for labor or materials commenced to be furnished after its approval.

Approved—The 4th day of June, A. D. 1901.

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Practical Hints as to Mechanics' Liens.

The judges of our Pennsylvania Courts are not at all agreed in opinion as to the Act of 1901. In some of the decisions it is spoken of as complex and hard to understand, while in other decisions the Courts seem to regard the law as clear, and say that the only difficulty is that of being obliged to closely adhere to it.

In the use of any Act of Assembly, the only safe rule is to study the text of the Act; but in the study and use of this Act, both professional men and laymen will find aid in the following practical hints, which are of value not only to the lawyer, but to the material-man and sub-contractor, who, if acquainted with the requirements to be fulfilled by him, can often keep himself so protected that counsel, when consulted, can successfully file a lien. From them, the material-man or sub-contractor can also learn in what classes of cases he may not file a lien and so safeguard himself by taking security before engaging in the contract.

1. *No mechanics' lien* may be filed against property belonging to the state or any sub-division thereof. For such claims, a remedy is found in Sec. 6, of the Act of 1901 and in the Act of May 6, 1909.

2. No claim can be filed for alterations or repairs to, or for fitting up or equipping old structures, etc., with machinery, etc., unless the claim exceeds one hundred dollars.

3. In claims for alterations and repairs to, or fitting up and equipping old structures with machinery, etc., the sub-contractor must on or before the day he completed his work or furnished the last of his materials, give notice of his intention to file a claim therefor, if the amount due, be not paid.

4. In order to make a valid claim against the estate of the owner for improvements to leased property, it must appear in writing, signed by the owner, that the improvement is for "his immediate use and benefit."

5. An owner, who knowingly and without objection allows a person acting as owner, to make a contract for which a lien could be filed, ratifies the contract so made, and a lien may be filed as if the contract was made by the owner.

6. A contractor need not give any notice to the owner of his intention to file a mechanics' lien.

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7. Any sub-contractor intending to file a mechanic's claim must give notice as provided in the eighth section as amended by the Act of 1909, and in cases of alterations and repairs to old buildings, etc., must also give notice as provided in section two on or before the day the last work is done or last material is furnished.

8. After notice of intention is given to an owner, he may retain out of money due the contractor a sum sufficient to protect him from loss.

9. Liens against tenancies or leaseholds and for alterations and repairs and for fitting up or equipping old structures with machinery, etc., must be filed within three months after the claimant's contract is completed. For new constructions, and in cases other than above six months is allowed within which to file a claim.

10. A Sci. Fa. must issue within two years from the filing of the lien, and be reduced to verdict or judgment within five years from issuance.

11. A judgment on a lien must be revived by Sci. Fa. within each recurring five years thereafter.

12. The contract under which the work is done need not now be set out in the lien.

13. Apportioned liens are no longer allowed. Separate claims must be filed, apportioning the total amount of the contract among them.

14. A single claim may be filed for labor or materials furnished continuously in the erection of, addition to or removal of a structure, even where done under several contracts.

15. Contracts waiving the right of lien should be filed in the office of the prothonotary of the Court of Common Pleas of the county, and indexed in the judgment index with the contractor as defendant.

16. A contract waiving the right of lien is valid; (a) if the sub-contractor has actual notice thereof before furnishing labor or materials; (b) if a written and signed contract to that effect has been filed in the prothonotary's office prior to the commencement of work upon the ground; (c) or has been filed within ten days after the execution of the principal contract; (d) or has been filed not less than ten days prior to the claimant's contract.

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17. Actual notice of a contract impairing the rights of claimants, shall be given to those to be affected by it prior to making contracts with them, and failure to give notice shall be ground for rescission and recovery by lien by the one ignorant of the contract.

18. No right of lien exists where a structure is destroyed by fire or other casualty. In case of destruction by fire or other casualty the claimant may by bill in equity compel the application of the insurance as provided in Sec. 49.

19. Notice must be given to the owner that a lien has been filed, within a month after filing, and an affidavit filed of record showing the fact and manner of service.

20. Any defendant may rule a claimant to issue a Sci. Fa. The lien may be stricken off for failure to obey the rule.

21. If the contractor is served with the Sci. Fa. the judgment is a personal one as to him, but as to the owner it is not personal except for costs.

22. The issue on a mechanics' lien is made up of the Sci. Fa., the affidavit of defence and the replication if any be required; otherwise, of the Sci. Fa., and affidavit of defence.

23. Amendments are liberally allowed saving intervening rights, except where they undertake to substitute a different property or party after the time for filing has expired.

24. Parties may now demand receipts for payments for labor or material furnished to a structure or improvement.

25. Appeals are taken as in other cases to the Superior or Supreme Courts.

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FORMS.

NOTICE OF INTENTION TO FILE LIEN FOR ALTERATIONS, REPAIRS OR ADDITIONS.

UNDER § 2.

To ————, Owner.

SIR:—Notice is hereby given that a Lien will be filed against the building and premises ———— for ———— (here specify kind of materials or nature of work) ———— furnished by me for and about the alterations, repairs and additions to said building of which you are the owner or reputed owner and ———— the contractor therefor, unless the same be paid upon completion; in accordance with the provisions of the Act of Assembly of June 4, 1901.

————————

Sub-Contractor and Claimant.

NOTICE BY SUB-CONTRACTOR TO OWNER OF INTENTION TO FILE A LIEN UNDER THE ACT OF MARCH 24TH, 1909, AMENDING SECTION 8 OF THE MECHANICS' LIEN ACT OF 1901.

To ————, Owner.

Notice is hereby given that a lien will be filed by me against premises No. ———— ———— Street, for materials furnished (or work done) amounting to ———— Dollars, in accordance with the terms of the accompanying affidavit, unless said claim be forthwith paid and satisfied.

————————

Sub-Contractor.

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AFFIDAVIT TO ACCOMPANY NOTICE.

Commonwealth of Pennsylvania, }
} ss.
County of ———— }

———— vs. ————

————, being duly sworn according to law, deposes and says that he is a sub-contractor having furnished labor or material for and toward the erection and construction (or alteration and repair to, as the case may be) of the premises No. ———— ———— Street, in the City of ———— and County of ————; that the name of the person with whom deponent contracted is ————; the amount alleged to be still due to deponent is ———— Dollars; the nature of the labor or materials furnished is ————, and the date when the last work was done or the last material furnished is ————; all of which facts are true to the best of deponent's knowledge and belief.

Sworn to and subscribed before me this ———— day of ————, A. D. 19——. } ————

LIEN BY SUB-CONTRACTOR FOR LABOR OR MATERIALS FURNISHED FOR A NEW BUILDING.

In the Court of Common Pleas No. ————, for the County of ————.

———— vs. ———— Owner or reputed owner and ———— Contractor. } Term No. M. L. D.

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———— of the ———— of ———— files this lien against ————, owner, and against ————, contractor, and against all that certain (here insert a particular description of the building, giving height, size and other data necessary for identification) ———— and lot of ground situate (here insert the description of the lot, giving definite dimensions and boundaries) on ———— side of ———— and hereinafter more particularly described for labor done and materials furnished and supplied for and toward the erection of said building and necessary for its construction and thereupon makes the following statement of his claim.

1. The name of the claimant is ————.

2. The name of the owner of the building or structure at the time of the furnishing of the labor and material hereinafter mentioned and the attaching of the lien thereof was ———— and the building still belongs to ————.

3. The name of the party with whom the said ———— claimant contracted was and is ———— and the name of the general contractor for the building was and is ————.

4. The name of the architect is ————. The amount or sum claimed to be due is $————, and is made up as follows: (Here insert a particular statement as to the contract under which the lien is claimed annexing a copy of the contract and specifications therein referred to.)

5. The nature and kind of the work done and the kind and amount of the materials furnished to said building by the said ————, claimant under said contract, is set out as far as possible in the detailed statement hereto annexed and made a part hereof and marked Exhibit ————. Said work may be described as ————; the work and labor done and the materials furnished by the claimant are set forth in detail in said Exhibit ————. Claimant avers that said work and labor shown in said detailed statement were actually done and performed in connection with and in performance of said contract and in the erection and construction of said building, and that the materials set forth in said statement were actually used and furnished for and toward and in and about the erection and construction thereof: that the prices charged in said detailed statement for said work and materials, were and are the fair market value thereof.

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6. The said work and labor was done and said materials were furnished and supplied continuously between ——— day of ———, 19——, and ——— day of ———, 19——.

7. The lien is claimed against the fee (or any lesser estate if such be the fact) and is claimed from ———, being the date of the visible commencement upon the ground of the work of building.

8. The locality of the structure against which the lien is claimed is ——— side of ——— in the City of ———. The structure is a (here insert a description of the structure giving size, number of stories and material of which it is constructed). The real estate on which said structure is situated is a lot of ground situate on the ——— side of ——— in the City of ——— described as follows: (Here insert a description by metes and bounds). Said structure occupied the whole of said lot except ———, which is essential to its use and is used as appurtenant thereto and as its curtilage.

9. Claimant avers that written notice of intention to file this claim duly prepared and sworn to was served upon ———, the defendant, on the ——— day of ———, 19——, at ——— by handing said notice to ——— and making ——— acquainted with the contents thereof in accordance with the provisions of the Act of Assembly of June 4, 1901.

———

Claimant.

County of ——— ss.

———, being duly sworn according to law, deposes and says that he is (or one of) the claimant above named, and that the facts set forth in the foregoing claim are true to the best of his own knowledge and belief, and so far as they are derived from information of others, that he has made a careful examination and inquiry as to the truth thereof, and as a result of such examination and inquiry, he believes them to be true.

Sworn to and subscribed before me this ——— day of ———, A. D. 19——. ———

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AVERMENT IN LIENS FOR REPAIRS, ALTERATIONS AND ADDITIONS.

Appended to the foregoing general form of Lien, must be added this proviso.

This claimant gave written notice to said ——— owner or reputed owner of the property aforesaid, at (or before) the day the claimant furnished the last of his materials (or completed the last of his work) hereinbefore specifically set forth, in or about the repair, alteration and addition, of the building described herein, of his (or their) intention to file a Lien against the same for the materials so furnished (or work done) by leaving said notice with ——— at ——— on the ——— day of ———, A. D. 19——, in accordance with the provisions of the Act of Assembly of June 4, 1901.

NOTE.—In paragraph four I have inserted a suggestion that a copy of the contract and specifications, with a statement of the claim be inserted. This is not required by the Act of 1905, but in my judgment is a wise precaution.

NOTICE BY OWNER TO CONTRACTOR TO PAY CLAIM.

UNDER § 9.

To ———.

SIR:—Notice is hereby given that I have been served by ——— with a statement of claim and notice of his intention to file a Lien against premises ———, for which you are the contractor, (copies of which are herewith enclosed) and unless said claim is settled within fifteen days hereafter, or I am furnished with a sworn statement setting forth wherein it is intended to be disputed, I shall pay the same and deduct the amount thereof from the contract price or hold you personally liable for any loss.

(Owner.)

NOTICE OF FILING OF LIEN.

UNDER § 21.

To ———, Owner.

Take notice that I have filed a Mechanics' claim against the premises

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No. ——— ——— Street, of which you are owner or reputed owner, for the sum of ——— Dollars. Said lien is filed in the Court of Common Pleas No. ——— of the County of ——— as of ——— Term, 19——, No. ———, and was filed on the ——— day of ——— 19——.

———————

Claimant.

NOTE:—In addition to serving this notice, an affidavit must be made and filed of record within a month of the filing of the claim, showing the fact and manner of the service of such notice.

———

Rules taken under this Act should be prepared in accordance with the forms heretofore usually used in such cases. No form of petition or bill can be prepared, which may be regarded as a standard to be used under all the different sections. Each petition or bill to be filed under the Act must be adapted to the peculiar circumstances of the particular case, and should be drawn following as closely, the phraseology of the Act, as may be possible, and having also in mind the general rules of Court with reference to petitions and bills in equity.

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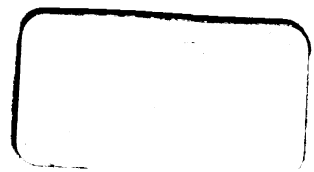

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